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RELEASE

The draft Taxation Laws Amendment Bill, 2010, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2010, as tabled in Parliament earlier this year.

The National Treasury invites members of the public to submit comments on the draft legislation by no later than 11 June 2010 to:

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REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

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

(MINISTER OF FINANCE)

10 May 2010

[B – 2010]

No. of copies printed ...1800

ISBN 978-77037-

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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 clarify a provision; to make new provision; and to correct a reference;
- amend the **Estate Duty Act, 1955**, so as to correct a reference and to clarify a provision;
- amend the **Income Tax Act, 1962**, so as to fix the rates of normal tax and amend monetary amounts; to amend, delete and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make new provision; and to effect textual and consequential amendments;
- amend the **Customs and Excise Act, 1964**, so as to amend rates of duty in Schedule No. 1;
- amend the **Value-Added Tax Act, 1991**, so as to amend certain definitions; to make new provision; and to amend certain provisions;
- amend the **Revenue Laws Amendment Act, 2006**, so as to amend the special measures relating to 2010 FIFA World Cup South Africa;
- amend the **Revenue Laws Amendment Act, 2007**, so as to amend a commencement date;
- amend the **Mineral and Petroleum Resources Royalty Act, 2008**, so as to amend and insert certain definitions; to clarify certain provisions; to make new provision; and to amend the Schedules;
- amend the **Taxation Laws Amendment Act, 2009**, so as to change commencement dates; to clarify certain provisions; and to correct a reference;

and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980,

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section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002, section 1 of Act 45 of 2003 and section 1 of Act 17 of 2009

1. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended by the addition in the definition of “property” of the word “and” at the end of paragraph (f).

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

Insertion of section 3A into the Transfer Duty Act

2. (1) The Transfer Duty Act, 1949, is hereby amended by the insertion of the following section:

“Shari’a compliant financing arrangements

3A. (1) For the purposes of this Act, in the case of any Murabaha arrangement as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962)—

(a) the bank offering the Murabaha arrangement is deemed to act for the benefit of the client and not for the bank’s own benefit for the purposes of the arrangement;

(b) the client is deemed to be acting for the client’s own benefit in respect of the acquisition of the property from the seller for an amount equal to the consideration payable by the bank to the seller and at the time that the acquisition was made from the seller.

(2) For the purposes of this Act, in the case of any Diminishing Musharaka arrangement as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962)—

(a) the bank offering the Diminishing Musharaka arrangement is deemed to act for the benefit of the client and not for the bank’s own benefit for the purposes of the arrangement;

(b) the client is deemed to be acting for the client’s own benefit in respect of the acquisition of the bank’s proportionate share in the property from the seller for the consideration payable by the bank to the seller and at the time that the acquisition was made from the seller.

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(3) For the purposes of this section, the terms ‘Murabaha’, ‘Diminishing Musharaka’, ‘seller’, ‘bank’ and ‘client’ have the meanings ascribed to those terms in section 24JA of the Income Tax Act, 1962 (Act No. 58 of 1962).”.

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

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007, section 1 of Act 60 of 2008 and section 3 of Act 70 of 2009

3. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (20) of the following subsection:

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

(2) Subsection (1) comes into operation on 1 October 2010 and applies in respect of acquisitions taking place on or after that date and before 1 January 2013.

Amendment of section 4A of Act 45 of 1955, as substituted by section 5 of Act 17 of 2009

4. (1) Section 4A of the Estate Duty Act, 1955, is hereby amended—

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

“(b) the amount specified in subsection (1) divided by the number of spouses, reduced by an amount which is determined by dividing the amount deducted, in accordance with **[subsection (1)]** this section, from the net value of the estate of the previously deceased person by the number of spouses of that previously deceased person.”;

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(b) by the addition of the following subsection:

“(6) Where a person and his or her spouse die simultaneously, the person of whom the net value of the estate, determined in accordance with section 4, is the smallest must be deemed for the purposes of this section to have died immediately prior to his or her spouse.”

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

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

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

(2) The rate of tax fixed by Parliament in terms of section 48B(1) of the Income Tax Act, 1962, is set out in paragraph 7 of Appendix I to this Act.

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

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

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

- (a) any person (other than a company or a trust other than a special trust) for the year of assessment commencing on or after 1 March 2010;
- (b) any company for any year of assessment ending during the period of 12 months ending on 31 March 2011; and
- (c) any trust (other than a special trust) for any year of assessment ending on 28 February 2011.

(6) The rate of tax referred to in subsection (2) applies in respect of the taxable turnover of a person that was a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 March 2010.

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Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice No. 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice No. 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008 and section 7 of Act 17 of 2009

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

(a) by the deletion of the definition of “capitalization shares”;

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

“(ii) **[arrangement or]** portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme (other than a portfolio of a collective investment scheme in property or a portfolio of a declared collective investment scheme) in pursuance of any arrangement in terms of which members of the public (as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)), are invited or permitted to **[invest in a portfolio of a collective investment scheme, where one or more investors contribute to and hold a participatory interest in a portfolio of the scheme]** contribute to and hold participatory interests in that portfolio through shares, units or any other form of participatory interest; or”;

(c) by the substitution in the definition of “connected person” for subparagraphs (iv) and (v) of paragraph (d) of the following subparagraphs:

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- “(iv) any person, other than a company as defined in section 1 of the Companies Act, **[1973 (Act No. 61 of 1973)] 2008 (Act No.71 of 2008)**, who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20 per cent of **[the company’s equity share capital or voting rights]**—
- (aa)* the equity shares in the company; or
- (bb)* the voting rights in the company;
- (v) any other company if at least 20 per cent of the equity **[share capital of such] shares in the company [is] are** held by **[such] that** other company, and no shareholder holds the majority voting rights **[of such] in the** company;”;
- (d) by the substitution for the definition of “equity share capital” of the following definition:
- “**‘equity share’** means, in relation to any company, any share in that company, excluding any share that does not carry any right to participate beyond a specified amount in a distribution;”;
- (e) by the substitution for the definition of “foreign dividend” of the following definition:
- “**‘foreign dividend’** means any amount received by or accrued to any person by way of a distribution made by a foreign company as defined in section 9D where that amount is—
- (a)* treated as a dividend for the purposes of the laws relating to tax on income of the country of which that foreign company is a resident; or
- (b)* where that country does not have any applicable laws relating to tax on income, treated as a dividend for the purposes of the laws of that country relating to companies;”;
- (f) by the insertion before the definition of “government grant” of the following definition:
- “**‘functional currency’**, in relation to—
- (a)* a person, means the currency of the primary economic environment in which the business operations of that person are conducted; and
- (b)* a permanent establishment of any person, means the currency of the primary economic environment in which the business operations of that permanent establishment are conducted,
- consistently applied for tax purposes;”;
- (g) by the insertion in the definition of “gross income” after paragraph (l) of the following paragraph:

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- “(lA) any amount received by or accrued to a company or association as contemplated in subparagraph (ii) of section 11E;”;
- (h) by the substitution in paragraph (m) of the definition of “gross income” for the words preceding the proviso of the following words:
- “(m) any amount, other than an amount contemplated in paragraph (mA), received or accrued under or upon the surrender or disposal of, or by way of any loan or advance granted on or after 1 July 1982 by the insurer concerned under or upon the security of, any policy of insurance upon the life of any person who, at any time while the policy was in force, was an employee of the taxpayer or, where the taxpayer is a company, was a director or employee of that company, if any premium paid in respect of such policy is or was deductible from the taxpayer’s income, whether in the current or any previous year of assessment, under the provisions of section 11”;
- (i) by the insertion in the definition of “gross income” after paragraph (m) of the following paragraph:
- “(mA) any amount received or accrued from the proceeds of a policy of insurance as contemplated in section 11(w): Provided that where a deduction was not allowed under section 11(w) for expenditure incurred in respect of any premium of such policy the amount included in gross income under this paragraph must be reduced by an amount that bears to the total amount received or accrued the same ratio as the total amount of the premiums in respect of which a deduction was not allowed bears to the amount of the total premiums paid in respect of that policy;”;
- (j) by the insertion before the definition of “hotel keeper” of the following definition:
- “ ‘**headquarter company**’, in respect of any year of assessment, means any company if—
- (a) for the duration of that year of assessment and of all previous years of assessment of that company, each shareholder (whether alone or together with any other company forming part of the same group of companies as the shareholder) held 20 per cent or more of the equity shares and voting rights in that company;
- (b) as at the end of that year of assessment and of all previous years of assessment of that company, 80 per cent or more of the base cost, as defined in the Eighth Schedule, of the total assets of the company is attributable to—

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- (i) interests in equity shares in foreign companies; and
 - (ii) amounts loaned or advanced to foreign companies, in which that company (whether alone or together with any other company forming part of the same group of companies as that company) held at least 20 per cent of the equity shares and voting rights as at the end of that year of assessment and of all previous years of assessment of that company; and
- (c) 80 per cent or more of the total receipts and accruals of that company for that year of assessment and for all previous years of assessment of the company consisted of amounts in the form of—
 - (i) dividends, interest, royalties or management fees paid or incurred by any foreign company contemplated in paragraph (b); or
 - (ii) proceeds from the disposal of any interest contemplated in paragraph (b)(i), where those proceeds were or would have been taken into account in determining—
 - (A) the aggregate capital gain as contemplated in paragraph 6; or
 - (B) the aggregate capital loss as contemplated in paragraph 7, of the Eighth Schedule of that company for the relevant year of assessment.”;
- (k) by the substitution in the definition of “listed company” for paragraph (a) of the following paragraph:
 - “(a) an exchange as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of [**the Securities Services**] that Act [, 2004].”;
- (l) by the deletion of the definition of “nominal value”;
- (m) by the substitution in the definition of “pension fund” for the further proviso of the following further proviso:
 - “: Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of ‘pension preservation fund’ which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September [**2009**] 2010 to be a fund which is not approved in terms of this definition.”;
- (n) by the substitution in the definition of “pension preservation fund” for item (bb) of paragraph (a)(i) of the proviso of the following item:

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- “(bb) the winding up or partial winding up of that fund, if the member elects or is required in terms of the rules to transfer to this fund; or”;
- (o) by the substitution in the definition of “pension preservation fund” for item (aa) of paragraph (a)(ii) of the proviso of the following item:
- “(bb) if that fund was wound up or partially wound up; or”
- (p) by the substitution in the definition of “pension preservation fund” for the further proviso 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] 2010; and
- (ii) the rules of a pension fund contemplated in paragraph (i) that are submitted before 30 September [2009] 2010 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;”;
- (q) by the addition to the definition of “permanent establishment” of the following proviso:
- “: Provided that in determining whether a qualifying investor in relation to a partnership or trust has a permanent establishment in South Africa, any act of that partnership or trust in respect of any financial instrument must not be ascribed to that qualifying investor”;
- (r) by the substitution for the definition of “person” of the following definition:
- “ ‘**person**’ includes an insolvent estate, the estate of a deceased person, any trust and any portfolio of a collective investment scheme [**in securities**] other than a portfolio of a collective investment scheme in property;”;
- (s) by the insertion after the definition of “person” of the following definitions:
- “ ‘**portfolio of a collective investment scheme**’ means any—
- (a) portfolio of a collective investment scheme in participation bonds;
- (b) portfolio of a collective investment scheme in property;
- (c) portfolio of a collective investment scheme in securities; or
- (d) portfolio of a declared collective investment scheme;
- ‘**portfolio of a collective investment scheme in participation bonds**’ means any portfolio comprised in any collective investment scheme in participation bonds contemplated in Part VI of the Collective Investment Schemes Control Act, 2002 (Act

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No. 45 of 2002), managed or carried on by any company registered as a manager under and for the purposes of that Part;

‘portfolio of a collective investment scheme in property’ means any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by any company registered as a manager under section 51 of that Act for the purposes of that Part;”;

- (t) by the insertion after the definition of “portfolio of a collective investment scheme in securities” of the following definition:

“ **‘portfolio of a declared collective investment scheme’** means any portfolio comprised in any declared collective investment scheme contemplated in Part VII of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by any company registered as a manager under section 64 of that Act for the purposes of that Part;”;

- (u) by the substitution in the definition of “provident fund” for the further proviso of the following further proviso:

“: Provided further that a fund contemplated in paragraph (i) of the further proviso to the definition of ‘provident preservation fund’ which is deemed to be approved or which is approved in terms of that definition or which fails to submit its rules as required by that paragraph is deemed with effect from the earlier of the date of the deemed approval or 30 September [2009] 2010 to be a fund which is not approved in terms of this definition;”;

- (v) by the substitution in the definition of “provident preservation fund” for item (bb) of paragraph (a)(i) of the proviso of the following item:

“(bb) the winding up or partial winding up of that fund, if the members elect or are required in terms of the rules to transfer to this fund; or”;

- (w) by the substitution in the definition of “provident preservation fund” for item (aa) of paragraph (a)(ii) of the proviso of the following item:

“(bb) if that fund was wound up or partially wound up; or”;

- (x) by the substitution in the definition of “provident preservation fund” for the further proviso of the following further 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 the

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Commissioner for approval in terms of the provisions of this definition before 30 September [2009] 2010; and

- (ii) the rules of a provident fund contemplated in paragraph (i) that are submitted before 30 September [2009] 2010 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”;
- (y) by the insertion before the definition of “regional electricity distributor” of the following definition:

“ **‘qualifying investor’** means a partner in a partnership or a beneficiary of a trust if the liability of the partner or beneficiary towards any creditor of the partnership or trust is limited to the amount that the partner or beneficiary has contributed or undertaken to contribute to the partnership or trust, and that partner or beneficiary does not—

(a) participate in the effective management of the trade or business of the partnership or trust;

(b) have the authority to act on behalf of the partnership, the partners of the partnership or the trust; or

(c) render any services to or on behalf of the partnership or trust;”;

- (z) by the substitution in the definition of “retirement annuity fund” for item (cc) of paragraph (b)(xii) of the proviso of the following item:

“(cc) for the benefit contemplated in [**paragraph (b)(x)(cc)**] subparagraph (x)(cc)”;

- (zA) by the insertion after the definition of “securities lending arrangement” of the following definition:

“ **‘severance benefit’** means any amount (being a lump sum other than a lump sum benefit)—

(a) excluding an amount contemplated in section 23(p); but

(b) including any voluntary award, received by or accrued to a person from or by arrangement with the person’s employer in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person’s office or employment or of the person’s appointment (or right or claim to be appointed) to any office or employment, if—

(i) such person has attained the age of 55 years;

(ii) such relinquishment, termination, loss, repudiation, cancellation or variation is due to the person becoming permanently incapable of

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holding the person's office or employment due to sickness, accident, injury or incapacity through infirmity of mind or body; or

(iii) such termination is due to—

(aa) the person's employer having ceased to carry on or intending to cease carrying on the trade in respect of which the person was employed; or

(bb) the person having become redundant in consequence of a general reduction in personnel or a reduction in personnel of a particular class by the person's employer,

unless, where the person's employer is a company, the person was at any time a director of the company and at any time held more than five per cent of the issued share capital or members' interest in the company:

Provided that any such amount which becomes payable in consequence of or following upon the death of a person must be deemed to to be an amount which accrued to such person immediately prior to his or her death;”;

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

“(a) in relation to any company referred to in paragraph (a), (b) or (d) of the definition of ‘company’ in this section, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights **[of participation in the profits, income or capital]** attaching to the share so registered, that other person shall, to the extent that such other person is entitled to such benefit, also be deemed to be a shareholder; or

(b) in relation to any company referred to in paragraph (e) of the said definition, the registered holder of any participatory interest included in the relevant portfolio, except that where some person other than the holder of any participatory interest is entitled, whether by virtue of any provision in the trust deed entered into for the purposes of the relevant collective investment scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights **[of participation in the profits, income or capital]** attaching to the

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participatory interest, that other person shall, to the extent that such other person is entitled to such benefit, also be deemed to be a shareholder;” and

(zC) by the substitution for the definition of “trading stock” of the following definition:

“ ‘trading stock’—

(a) includes—

[*(a)* anything—]

- (i) anything produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by **[him]** the taxpayer or on **[his]** behalf of the taxpayer, **[, or]**;
- (ii) anything the proceeds from the disposal of which forms or will form part of **[his]** the taxpayer’s gross income, otherwise than—
 - (aa)* in terms of paragraph *(j)* or *(m)* of the definition of ‘gross income’**[,]**;
 - (bb)* in terms of paragraph 14(1) of the First Schedule; or
 - (cc)* as a recovery or recoupment contemplated in section 8(4) which is included in gross income in terms of paragraph *(n)* of **[that]** the definition of ‘gross income’; or
- [*(b)*]*(iii)*** any consumable stores and spare parts acquired by **[him]** the taxpayer to be used or consumed in the course of **[his]** the taxpayer’s trade**[,]**; but

(b) does not include—

- (i)* a foreign currency option contract as defined in section 24I(1) **[and]** or;
- (ii)* a forward exchange contract as defined in section 24I(1);”.

(2) Paragraphs *(a)*, *(c)*, *(d)*, *(e)*, *(l)* and (zB) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

(3) Paragraphs *(b)*, *(r)*, *(s)* and *(t)* of subsection (1) are deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

(4) Paragraphs *(f)* and *(j)* of subsection (1) comes into operation on 1 January 2011 and apply in respect of any year of assessment commencing on or after that date.

(5) Paragraph *(g)* of subsection (1) is deemed to have come into operation from the commencement of years of assessment ending on or after 1 January 2008.

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(6) Paragraphs (h), (i), (q) and (y) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and apply in respect of receipts and accruals on or after that date.

(7) Paragraphs (m), (p), (u), (x) and (z) of subsection (1) are deemed to have come into operation on 1 March 2009.

(8) Paragraphs (n), (o), (v) and (w) of subsection (1) come into operation on 1 March 2011 and apply in respect of lump sum benefits transferred on or after that date.

(9) Paragraph (zA) of subsection (1) comes into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date.

(10) Paragraph (zC) of subsection (1) is deemed to have come into operation on the date of promulgation of this Act and applies in respect of years of assessment ending on or after that date.

Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008 and section 8 of Act 17 of 2009

7. (1) Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (10) of the following subsection:

“(10) Where any taxpayer’s income includes any special remuneration, or where the provisions of paragraph 15(3), 17 or 19(1) of the First Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax (excluding tax on any lump sum benefit) 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—

$$Y = \left(\frac{A}{B + D - C} \right) \times B$$

in which formula—

(a) ‘Y’ represents the amount of normal tax to be determined;

(b) ‘A’ represents the amount of normal tax (as determined before the deduction of any rebate) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression ‘B + D – C’ in the formula;

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(c) 'B' represents the taxpayer's taxable income (excluding any lump sum benefit) for the said year;

(d) 'C' represents an amount equal to the sum of—

(i) the amount of any special remuneration (as defined in subsection (9)) which is included in the taxpayer's income for the said year;

(ii) where the provisions of paragraph 15(3) of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount determined in accordance with those provisions as being the amount, if any, by which the taxable income derived by the taxpayer during the said year from the disposal of plantations and forest produce exceeds the annual average taxable income derived by the taxpayer from that source over the three years of assessment immediately preceding the said year;

(iii) where the provisions of paragraph 17 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, an amount equal to so much of the taxable income of the taxpayer for such year as has been derived from the disposal of sugar cane as a result of fire in the taxpayer's cane fields and but for such fire would not have been derived by the taxpayer in that year;

(iiiA) where the provisions of subparagraph (1) of paragraph 19 of the First Schedule are in the case of the taxpayer applicable in respect of the said year, the amount by which the taxpayer's taxable income derived from farming for that year exceeds the taxpayer's average taxable income from farming as determined in relation to that year in accordance with subparagraph (2) of the said paragraph; and

(e) 'D' represents an amount equal to so much of any current contribution to a retirement annuity fund as is allowable as a deduction in terms of section 11(n)(aa)(A) solely by reason of the inclusion in the taxpayer's income of any amount contemplated in paragraph (d)(i), (ii), (iii) or (iiiA):

Provided that in no case shall the amount of normal tax so payable be less than the amount of normal tax which would be chargeable at the relevant rate fixed in terms of subsection (2) in respect of the first rand of taxable income, and nothing in this section contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of that person's taxable income."

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(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.

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, section 5 of Act 8 of 2007 and section 7 of Act 60 of 2008

xx. (1) Section 6 of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(5) Where a taxpayer’s taxable income consists solely of ‘net remuneration’ as defined in the Fourth Schedule, the normal tax determined in respect of that year of assessment must be reduced, in respect of—

(a) the year of assessment commencing on or after 1 March 2011, by an amount equal to two-thirds; and

(b) the year of assessment commencing on or after 1 March 2012, by an amount equal to one-third,

of the difference between the normal tax payable before the application of this

subsection and the aggregate of the Standard Income Tax on Employment (SITE) paid by that taxpayer in respect of that year of assessment.”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2011.

Amendment of section 7A of Act 58 of 1962, as inserted by section 6 of Act 69 of 1975 and amended by section 7 of Act 103 of 1976, section 6 of Act 96 of 1981, section 4 of Act 65 of 1986, section 8 of Act 129 of 1991, section 3 of Act 113 of 1993, section 7 of Act 21 of 1995 and section 5 of Act 36 of 1996

9. (1) Section 7A of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4A).

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(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, section 5 of Act 3 of 2008, section 9 of Act 60 of 2008 and section 11 of Act 17 of 2009

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

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

“(aa) on travelling on business, as contemplated in paragraph (b), unless an allowance or advance has been granted in respect of the use of a motor vehicle by an employer as contemplated in paragraph 7 of the Seventh Schedule;” and

(b) by the deletion in subsection (1)(b) of the proviso to subparagraph (ii);

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

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, section 10 of Act 35 of 2007 and section 10 of Act 60 of 2008

11. Section 8B of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“If a person [as a result of a subdivision, consolidation, conversion or restructuring of the equity share capital of the employer or any company that is an associated institution as defined in the Seventh Schedule in relation to that employer] disposes of a qualifying equity share in exchange solely for any other equity share in that employer or any company that is an associated institution as defined in the Seventh

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Schedule in relation to that employer, that other equity share acquired in exchange is deemed to be—”.

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, section 11 of Act 35 of 2007 and section 11 of Act 60 of 2008

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

(a) by the deletion in subsection (1)(a) of the word “or” at the end of subparagraph (i);

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

“(ii) by virtue of any [**other**] restricted equity instrument held by that taxpayer in respect of which this section will apply upon vesting thereof[.]; or”;

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

“(iii) during the period of his or her employment by or office of director of any company from—

(aa) that company or any associated institution in relation to that company; or

(bb) any person employed by or that is a director of—

(A) that company; or

(B) any associated institution in relation to that company.”;

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

“(1A) If a capital distribution as contemplated in paragraph 74 of the Eighth Schedule, other than a capital distribution of an equity instrument, is received by or accrues to a taxpayer in respect of a restricted equity instrument, the taxpayer must include the amount of the capital distribution in his or her income for the year of assessment during which the amount is received or accrues.”;

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

“(a) If a taxpayer disposes of a restricted equity instrument which was acquired in the manner contemplated in subsection (1) for an amount which consists of or includes any other restricted equity instrument [**which is acquired from the employer, associated institution or other person by arrangement with the employer**] in the employer of the taxpayer or an associated institution in relation to the employer, that other restricted equity instrument acquired in exchange is deemed to be acquired by

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that taxpayer by virtue of his or her employment or office of director of any company.”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 January 2011 and apply in respect of acquisitions on or after that date.

(3) Paragraph (d) of subsection (1) comes into operation on 1 January 2011 and applies in respect of distributions made on or after that date.

(3) Paragraph (e) of subsection (1) comes into operation on 1 January 2011 and applies in respect of disposals on or after that date.

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003, section 9 of Act 32 of 2004 and section 7 of Act 8 of 2007

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

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “hybrid equity instrument” of the following paragraph:

“(a) any [**redeemable preference**] share other than an equity share which the relevant company is obliged to redeem in whole or in part within a period of three years from the date of issue thereof, or which may at the option of the holder be redeemed in whole or in part within the said period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or”;

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the definition of “hybrid equity instrument” of the following words:

“any [**other**] share other than a share contemplated in paragraph (a), if—”;

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

“(2) Any dividend declared by a company on a hybrid equity instrument which is declared on or after the date that the share becomes a hybrid equity instrument[,] shall for the purposes of this Act be deemed in relation to the recipient thereof only to be an amount of interest [**received by**] accrued to [him] the recipient from a source within the Republic.”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

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Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993, section 7 of Act 21 of 1994, section 9 of Act 21 of 1995, section 7 of Act 28 of 1997, section 25 of Act 30 of 1998, section 15 of Act 53 of 1999, section 7 of Act 59 of 2000, section 12 of Act 74 of 2002, section 20 of Act 45 of 2003, section 11 of Act 32 of 2004, section 13 of Act 31 of 2005 and section 8 of Act 20 of 2006

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

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

“(i) by the [**Government, any provincial administration, or by any municipality in**] government of the Republic in the national, provincial or local sphere; or”;

and

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

“(bb) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person) directly or indirectly, holds at least 20 per cent of the equity [**share capital of**] shares in that company or ownership or right to ownership of that other entity.”.

(2) Paragraph (b) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008 and section 12 of Act 60 of 2008

15. (1) Section 9C 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 “qualifying share” of the following words:

“ ‘**qualifying share**’, in relation to any taxpayer, means an equity share contemplated in section [44] 41, which has been disposed of by the taxpayer or which is treated as having been disposed of by the taxpayer in terms of paragraph 12 of the Eighth Schedule, if the taxpayer immediately prior to such disposal had been the owner of that share for a continuous period of at least three years excluding a share which at any time during that period was—”.

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

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, section 9 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008 and section 12 of Act 17 of 2009

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

(a) by the substitution in subsection (1) for the words preceding the proviso to the definition of “controlled foreign company” of the following words:

“means any foreign company where more than 50 per cent of the total participation rights in that foreign company are directly or indirectly held, or more than 50 per cent of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents, other than persons that are headquarter companies”;

(b) by the substitution in subsection (1) for paragraph (a) of the definition of “participation rights” of the following paragraph:

“(a) the right to participate directly or indirectly in [**the share capital, share premium, current or accumulated profits or reserves of**] all or part of the benefits of the rights (other than voting rights) attaching to a share, or any interest of a similar nature, in that company [, **whether or not of a capital nature**]; or”;

(c) by the substitution in subsection (1) for paragraph (a) of the definition of “participation rights” of the following paragraph:

“(a) the right to participate [**directly or indirectly**] in all or part of the benefits of the rights (other than voting rights) attaching to a share, or any interest of a similar nature, in that company; or”;

(d) by the substitution in subsection (2A) for paragraph (k) of the proviso of the following paragraph:

“(k) for the purposes of paragraph 43 of the Eighth Schedule, ‘local currency’ of a controlled foreign company otherwise than in relation to a permanent establishment of that controlled foreign company, means the functional currency [**used by**] of that company [**for purposes of financial reporting**]”;

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(e) by the substitution in subsection (2A) for subparagraph (i) of the further proviso of the following subparagraph:

“(i) the net income of a controlled foreign company in respect of a foreign tax year shall be deemed to be nil where the aggregate amount of tax payable to all spheres of government of any country other than the Republic by the controlled foreign company **[on the net income of that controlled foreign company]** in respect of the foreign tax year of that controlled foreign company is at least 75 per cent of the amount of normal tax that would have been payable in respect of any taxable income of the controlled foreign company had the controlled foreign company been a resident for that foreign tax year; and”;

(f) by the substitution for subsection (6) of the following subsection:

“(6) The net income of a controlled foreign company [,] shall be determined in the functional currency **[used by]** of that controlled foreign company **[for purposes of financial reporting]** and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the Republic by applying the average exchange rate for that year of assessment: Provided that—

- (a) in respect of the disposal of any asset contemplated in paragraph 43(4) of the Eighth Schedule which is not attributable to any permanent establishment of that controlled foreign company outside the Republic, any capital gain or capital loss of that controlled foreign company shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and that capital gain or capital loss shall be translated to the functional currency **[used by]** of that controlled foreign company **[for purposes of financial reporting]** by applying that average exchange rate;
- (b) in respect of the disposal of any foreign equity instrument which constitutes trading stock and which is not attributable to any permanent establishment of that controlled foreign company outside the Republic, the amount to be taken into account in determining the net income of that controlled foreign company must be determined in the currency of the Republic and that amount shall be translated to the functional currency **[so used by]** of that controlled foreign company by applying that average exchange rate; and
- (c) for the purposes of section 24I, ‘local currency’ in relation to an exchange item of a controlled foreign company which is not attributable to any permanent

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establishment of that company outside the Republic, means the currency of the Republic and any exchange difference determined must be translated to the functional currency [so used by] of that controlled foreign company by applying that average exchange rate;

- (d) (i) any asset or foreign equity instrument that is disposed of; and
(ii) any exchange item denominated,

in any currency other than the functional currency [used by] of that controlled foreign company [for purposes of financial reporting] shall be deemed not to be attributable to any permanent establishment of the controlled foreign company if the functional currency [used for financial reporting purposes] is the currency of a country which has an official rate of inflation of 100 per cent or more throughout that foreign tax year.”; and

- (g) by the substitution in subsection (9) for paragraph (e) of the following paragraph:

“(e) is included in the taxable income of the company [**and has not been or will not be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation**];”.

(2) Paragraphs (a), (c), (d) and (f) of subsection (1) come into operation on 1 January 2011 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

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

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section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008, section 16 of Act 60 of 2008 and section 13 of Act 17 of 2009

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

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

“(a) the receipts and accruals of the [**Government or any provincial administration;**

(b) **the receipts and accruals of municipalities]** government of the Republic in the national, provincial or local sphere;”;

(b) by the substitution in subsection (1)(cA)(i) for the words preceding item (aa) of the following words:

“any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, [**1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008)**), any co-operative, close corporation, trust or water services provider, and any Black tribal authority, community authority, Black regional authority or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—”;

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

“(cE) the receipts and accruals of any political party registered [**under the provisions of section 36 of the Electoral Act, 1979 (Act No. 45 of 1979)] in terms of section 15 of the Electoral Commission Act, 1996 (Act No. 51 of 1996);**”;

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

“(iii) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association approved by the Commissioner [**subject to such conditions as the Minister may prescribe by regulation]** in terms of section 30B; or”;

(e) by the substitution in subsection (1)(d) for the words following item (bb) of the following words:

“approved by the Commissioner [**subject to such conditions as the Minister may prescribe by regulation]** in terms of section 30B;”;

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- (f) by the substitution in subsection (1)(e)(i)(cc) for the words preceding subitem (A) of the following words:

“any other association of persons (other than a company registered or deemed to be registered under the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), any co-operative, close corporation and trust, but including a non-profit company [contemplated] as defined in section [21] 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), from its members, where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—”;

- (g) by the substitution in subsection (1)(i)(xv)(aa) for the words preceding the proviso of the following words:

“so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed [R3 500] R3 700”;

- (h) by the substitution in subsection (1)(i)(xv)(bb) for subitems (A) and (B) of the following subitems:

“(A) in the case of any natural person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of [R30 000] R32 000; or

(B) in any other case, the amount of [R21 000] R22 300.”;

- (i) by the deletion of subsection (1)(i);

- (j) by the deletion in subsection (1)(k) of the word “or” at the end of paragraph (aa) of the proviso to subparagraph (i);

- (k) by the substitution in subsection (1)(k) for paragraph (cc) of the proviso to subparagraph (i) of the following paragraph:

“(cc) to any dividend received by or accrued to or in favour of any person where such dividend constitutes or forms part of any consideration paid or payable to such person in respect of the disposal of shares (other than affected shares in respect of which the taxpayer has, in terms of the provisions of section 9B, elected the amount received or accrued on disposal to be deemed to be of a capital nature and other than qualifying shares as defined in section 9C), which were held as trading stock by such person in a company and such shares were acquired by such company in terms of [section 85 of] the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008); or”;

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- (l) by the addition in subsection (1)(k) to the proviso to subparagraph (i) of the following paragraph:
“(dd) to any dividend in respect of an equity instrument as defined in section 8C, unless the dividend constitutes an equity instrument as so defined;”;
- (m) by the substitution in subsection (1)(k)(ii) for the words preceding item (aa) of the following words:
“any foreign dividend or any dividend paid or declared by a headquarter company received by or accrued to a person—”;
- (n) by the substitution in subsection (1)(k)(ii)(aa) for subitem (A) of the following subitem:
“(A) relate to any amount which has been or will be subject to tax [**in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation**]; or”;
- (o) by the substitution in subsection (1)(k)(ii)(dd) for the words preceding the proviso of the following words:
“if that person (whether alone or together with any other company forming part of the same group of companies as that person) holds at least 20 per cent of the total equity [**share capital**] shares and voting rights in the company declaring the dividend, or 20 per cent of the total member’s interest and voting rights in the co-operative declaring the dividend, which co-operative is established in terms of the laws of any country other than the Republic”;
- (p) by the substitution in subsection (1)(k)(ii) for paragraph (A) of the proviso to item (dd) of the following paragraph:
“(A) in determining the total equity [**share capital**] shares or member’s interest, there shall not be taken into account any share which would have constituted a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section;”;
- (q) by the substitution in subsection (1)(k)(ii) for the proviso to item (dd) of the following proviso:
“: Provided that—
(i) in determining the total equity shares or member’s interest, there must not be taken into account any share if—
(aa) the company that issued that share is obliged to redeem the share in whole or in part;

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- (bb) that share may at the option of the holder of the share be redeemed in whole or in part; or
- (cc) the holder of that share has any right to require any person to—
- (A) procure, facilitate or assist with—
 - (AA) the redemption in whole or in part of that share;
 - (BB) the repayment in whole or in part of the amount subscribed for that share; or
 - (CC) the conversion of that share into any other share which is redeemable in whole or in part; or
 - (B) acquire that share in whole or in part from that holder;
- (ii) this exemption must not apply in respect of any foreign dividend payable on a share if—
- (aa) the amount of that dividend or any part thereof is to be calculated directly or indirectly with reference to—
- (A) any specified interest or indexation rate or other similar factor;
 - (B) the amount of expenditure incurred in respect of the acquisition of, or the amount subscribed for, that share; or
 - (C) any factor other than the profits of the company that issued that share; or
- (bb) that dividend or any part thereof is not treated as a dividend for purposes of the application of any agreement for the avoidance of double taxation;
- (iii) this exemption must not apply in respect of any dividend received by or accrued to any person if the amount of that dividend or part thereof is determined directly or indirectly with reference to any amount paid to any other person and the amount paid to that other person is exempt from normal tax in the hands of that other person; and
- (iv) this exemption must not apply in respect of any dividend received by or accrued to any person from any portfolio contemplated in paragraph (e) of the definition of ‘company’ in subsection (1);”;
- (r) by the substitution in subsection (1)(x) for paragraph (iv) of the proviso of the following paragraph:
- “(iv) the termination or impending termination of such person’s services is due to his employer having ceased to carry on or intending to cease carrying on the trade in respect of which such person was employed or to such person having become

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redundant in consequence of his employer having effected a general reduction in personnel or a reduction in personnel of a particular class and, where such person's employer is a company, such person was not at any time a director of such company and did not at any time hold more than five per cent of the **[issued share capital]** equity shares or members' interest in such company;”

(s) by the deletion of subsection (1)(x);

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

“(zE) any amount received by or accrued to the Small Business Development Corporation[,] Limited, by way of any subsidy or assistance payable by the State;” and

(u) by the substitution in subsection (1)(zJ) for subparagraph (i) of the following subparagraph:

“(i) investment income as defined in **[section 12E]** paragraph 1 of the Sixth Schedule; or”.

(2) Paragraphs (b), (f), (k), (o), (p) and (r) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

(3) Paragraphs (d) and (e) of subsection (1) come into operation on the date of promulgation of this Act.

(4) Paragraphs (g) and (h) of subsection (1) are deemed to have come into operation on 1 March 2010 and apply in respect of years of assessment commencing on or after that date.

(5) Paragraph (i) of subsection (1) comes into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

(6) Paragraphs (j) and (l) of subsection (1) come into operation on 1 January 2011 and apply in respect of dividends received by or accrued to or in favour of any person on or after that date.

(7) Paragraph (m) of subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

(8) Paragraph (q) of subsection (1) comes into operation on 1 January 2011 and applies in respect of dividends received or accrued during years of assessment commencing on or after that date.

(9) Paragraph (s) of subsection (1) comes into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date.

(10) Paragraph (u) of subsection (1) comes into operation as from the commencement of years of assessment ending on or after 1 January 2011.

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Insertion of section 10B in Act 58 of 1962

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

“Exemption of interest received by or accrued to persons that are not residents

10B. (1) For the purposes of this section—

‘bank’ means any—

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

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

(c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

‘debt instrument’ means any loan, advance, debt, bond, debenture, bill, promissory note, banker’s acceptance, negotiable certificate of deposit or similar instrument;

‘goods’ means any corporeal movable thing;

‘Government debt instrument’ means any debt instrument issued by the government of the Republic in the national, provincial or local sphere;

‘interest’ means interest as defined in section 24J(1) or deemed interest as contemplated in section 8E(2);

‘listed debt instrument’ means any debt instrument that is listed on an exchange as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of that Act;

‘non-resident’ means any person that is not a resident;

‘portfolio of a collective investment scheme’ means any portfolio of a collective investment scheme as defined in section 1, other than a portfolio of a collective investment scheme in property;

‘South African Reserve Bank’ means the central bank of the Republic regulated in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

(2) Subject to subsection (3), there must be exempt from normal tax any interest—

(a) received by or accrued to any non-resident during any year of assessment in respect of—

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(i) any Government debt instrument held by that non-resident;

(ii) any listed debt instrument held by that non-resident;

(iii) any debt owed by—

(aa) any bank;

(bb) the South African Reserve Bank; or

(cc) any other non-resident,

to that non-resident;

(iv) the purchase price of any goods imported into or exported from the Republic;

(v) the financing of any transaction under which goods are imported into or exported from the Republic; or

(vi) any other debt owed by a non-resident;

(b) payable as contemplated in section 27(6) of the Securities Services Act, 2004 (Act No. 36 of 2004), to any non-resident that is a client as defined in section 1 of that Act; or

(c) received by or accrued to any portfolio of a collective investment scheme that is deemed to have accrued to any non-resident in terms of section 25BA(a).

(3) Notwithstanding subsection (2), interest received by or accrued to a non-resident during any year of assessment in respect of—

(a) any amount advanced, whether directly or indirectly, by the non-resident to a bank will not be exempt from normal tax if the amount is advanced in the course of any arrangement, transaction, operation or scheme to which the non-resident and any other person are parties in terms of which the bank advances any amount to that other person on the strength directly or indirectly of the amount advanced by the non-resident to the bank; or

(b) any debt owed by any other non-resident to that non-resident will not be exempt from normal tax if that non-resident—

(i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or

(ii) at any time during that year carried on business through a permanent establishment in the Republic.”

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of any interest that accrues, is received, becomes payable or is deemed to have accrued on or after that date.

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Insertion of section 10C in Act 58 of 1962

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

“Exemption of interest received by or accrued to natural persons that are residents

10C. (1) For the purposes of this section—

‘bank’ means any bank as defined in section 10B;

‘debt instrument’ means any debt instrument as defined in section 10B;

‘Government debt instrument’ means any debt instrument as defined in section 10B;

‘listed debt instrument’ means any listed debt instrument as defined in section 10B;

‘portfolio of a collective investment scheme’ means a portfolio of a collective investment scheme as defined in section 10B.

(2) In the case of any natural person that is a resident, there must be exempt from normal tax—

(a) so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not exceed R3 700: Provided that the amount of the exemption in terms of this paragraph must—

(i) first apply in respect of any such foreign dividends; and

(ii) in so far as such amount exceeds the amount of such foreign dividends, apply in respect of any such interest; and

(b) so much of the aggregate of any interest—

(i) received by or accrued to him or her—

(aa) in respect of any Government debt instrument held by that natural person;

(bb) in respect of any listed debt instrument held by that natural person;

(cc) in respect of any debt owed by any bank to that natural person;

(dd) by virtue of his or her membership of any benefit fund;

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(ii) payable to that natural person as contemplated in section 27(6) of the Securities Services Act, 2004 (Act No. 36 of 2004), if that natural person is a client as defined in section 1 of that Act; or

(iii) received by or accrued to any portfolio of a collective investment scheme that is deemed to have accrued to that natural person in terms of section 25BA(a),

from a source in the Republic as does not during the year of assessment exceed—

(A) in the case of any natural person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of R32 000; or

(B) in any other case, the amount of R22 300,

reduced by the amount of any exemption allowable in terms of paragraph (a).”.

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of any interest that accrues, is received, becomes payable or is deemed to have accrued on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, section 10 of Act 3 of 2008, section 18 of Act 60 of 2008 and section 14 of Act 17 of 2009

20. (1) Section 11 of the Income Tax Act is hereby amended—

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

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“save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C, 12DA, [12E] 12E(1) or 37B) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment”;

- (b) by the deletion in paragraph (e) of paragraphs (i) and (iv) of the proviso;
- (c) by the addition in paragraph (e) of the word “and” at the end of paragraph (vii) of the proviso;
- (d) by the substitution in paragraph (g) for paragraph (iii) of the proviso of the following paragraph:

“(iii) if—

(aa) the taxpayer is entitled to such use or occupation for an indefinite period[, **he**]; or

(bb) the taxpayer or the person by whom such right of use or occupation was granted holds a right or option to extend or renew the original period of such use or occupation.

the taxpayer shall for the purposes of this paragraph be deemed to be entitled to such use or occupation for such period as in the opinion of the Commissioner represents the probable duration of such use or occupation;”;

- (e) by the substitution in paragraph (g) for paragraph (iv) of the proviso of the following paragraph:

“(iv) the aggregate of the allowances under this paragraph in respect of any building or improvements [**referred to in section 13(1) or 27(2)(b)**] shall not exceed the cost (after the deduction of any amount which has been set off against the cost of such building or improvements [**under section 13(3) or section 27(4)**]) to the taxpayer of such building or improvements less the aggregate of the allowances in respect of such building or improvements made to the taxpayer [**under the said section 13(1) or 27(2)(b) or the corresponding provisions of any previous Income Tax Act**];”;

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- (f) by the deletion in paragraph (g) of paragraph (v) of the proviso;
- (g) by the substitution in paragraph (g) for paragraph (vi) of the proviso of the following paragraph:

“(vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the definition of “gross income” in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued[, **unless the expenditure was incurred pursuant to an obligation to effect improvements in terms of—**

(aa) a Public Private Partnership; or

(bb) a right of use or occupation of land or a building owned by—

(i) the Government, any provincial administration or any municipality; or

(ii) any entity, the receipts and accruals of which are exempt in terms of section 10(1)(cA) or 10(1)(t),

where the right of use or occupation has a duration of 20 years or more];”;

- (h) by the substitution in paragraph (g) for paragraph (vii) of the proviso of the following paragraph:

“(vii) if during any year of assessment the agreement whereby the right of use or occupation of the land or buildings is granted is terminated before expiry of the period to which that taxpayer was **[initially]** entitled to the use or occupation, as contemplated in paragraph (ii) or (iii), so much of the allowance which may be allowed under this paragraph, which has not yet been allowed in that year or any previous year of assessment, shall be allowable as a deduction in that year of assessment;”;

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

“(gD) where that trade constitutes the provision of telecommunication services, the exploration, production or distribution of petroleum or the provision of gambling facilities, any expenditure (other than in respect of infrastructure) incurred to acquire a licence from the **[Government, a provincial administration or a municipality]** government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) **[or (b)]**, or an institution or entity contemplated in Schedule 1 or Part A or C of

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Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), where that expenditure is incurred in terms of the licence and the licence is required to carry on that trade, which deduction must not exceed for any one year such portion of the expenditure as is equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right to the licence after the date on which the expenditure was incurred, or 30, whichever is the lesser;”;

(j) by the substitution for paragraph (w) of the following paragraph:

“(w) expenditure actually incurred by the taxpayer in respect of any premium under any policy of insurance in respect of an employee or director of the taxpayer, if—

(i) the benefit payable under the policy is payable solely upon or by reason of the death, disablement or severe illness of the employee or director;

(ii) the policy exclusively makes provision for a benefit for the purposes of indemnifying the taxpayer for any loss or diminution of profits by reason of the death or disablement of the employee or director;

(iii) the policy is not the property of any person other than the taxpayer at the time of the payment of the premium in respect of any year of assessment: Provided that any premium paid shall not be disallowed as a deduction by reason of—

(aa) the policy or the right to receive the proceeds thereof being ceded or otherwise made over to or in favour of a creditor of the taxpayer as security for any debt; or

(bb) the policy being pledged as security for any loan at the time that the policy is concluded,

(iv) the policy or the right to receive the proceeds of the policy or any portion thereof is not ceded or otherwise made over to or in favour of—

(aa) the employee or director; or

(bb) any relative of such employee or director, under any transaction, operation or scheme:

Provided that—

(A) where the life of the employee or director is insured for a period of not more than one year or where the only premiums payable under the said policy are premiums of equal amount payable at regular intervals of not

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more than one year until benefits (other than interim or temporary benefits) become payable or commence to become payable under that policy, the amount of the allowance shall be an amount equal to the amount of the premium which became payable under such policy during the year of assessment; or

(B) in any other case, the amount of the allowance shall be an amount equal to such portion of the premium paid under the said policy as, in the opinion of the Commissioner (having regard *inter alia* to the terms of the policy and, in the appropriate circumstances, to the expectation of life of the employee or director) should be regarded as relating to the year of assessment.”.

(2) Paragraphs (d), (e), (f) and (g) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of agreements entered into on or after that date.

(3) Paragraph (j) of subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011 and applies in respect of premiums incurred on or after that date.

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by section 13 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008 and section 16 of Act 17 of 2009

21. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(2B) For the purposes of this section, if a taxpayer actually incurs expenditure to effect an improvement as contemplated in section 12N, that expenditure shall be deemed to be the cost to that taxpayer of any new and unused building, part thereof, or improvement thereto, contemplated in subsection (2).”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 11E of Act 58 of 1962, as inserted by section 20 of Act 35 of 2007 and amended by section 17 of Act 17 of 2009

22. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 11E of the following section:

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“Deduction of certain expenditure incurred by sporting bodies

11E. [(1)] For the purpose of determining the taxable income derived by—

[(i)](a) any company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a non-profit company as defined in the Companies Act, 2008 (Act No. 71 of 2008); or

[(ii)](b) an association of persons that has been incorporated, formed or established in the Republic,

from carrying on any sporting activities falling under a code of sport administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998), there shall be allowed as a deduction from the income of that company or association—

(i) expenditure, not of a capital nature, incurred by that company or association on the development and promotion, directly by that company or association; or

(ii) any payment made to any other company or association contemplated in this section for expenditure to be incurred on the development and promotion,

of sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport.”.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008.

Amendment of section 12D of Act 58 of 1962, as amended by section 23 of Act 30 of 2000, section 19 of Act 59 of 2000, section 28 of Act 60 of 2001, section 16 of Act 30 of 2002, section 23 of Act 35 of 2007, section 21 of Act 60 of 2008 and section 20 of Act 17 of 2009

23. (1) Section 12D of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(2B) For the purposes of this section, if a taxpayer actually incurs expenditure to effect an improvement as contemplated in section 12N, that expenditure shall be deemed to be the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset contemplated in subsection (2).”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

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Amendment of section 12E of Act 58 of 1962, as amended by section 12 of Act 19 of 2001, section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 14 of Act 20 of 2006, section 24 of Act 9 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008 and section 21 of Act 17 of 2009

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

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

“ ‘**small business corporation**’ means any close corporation[,] or co-operative or any private company [**registered as a private company in terms**] as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), all the shareholders of which are at all times during the year of assessment natural persons, where—”;

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

“(i) the gross income for the year of assessment does not exceed an amount equal to R14 million: Provided that where the close corporation, co-operative or company during the relevant year of assessment carries on any trade, for purposes of which any asset contemplated in this section is used, for a period which is less than 12 months, that amount shall be reduced to an amount which bears to that amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), during which that company, co-operative or close corporation carried on that trade bears to 12 months;”;

(c) by the substitution in subsection (4)(a)(ii) for item (cc) of the following item:

“(cc) a company contemplated in section [**10(1)(e)(i), (ii) or (iii)**] 10(1)(e)(i)(aa), (bb) or (cc)”;

(d) by the deletion in subsection (4)(a)(ii) of the word “or” at the end of item (ff);

(e) by the addition in subsection (4)(a)(ii) of the word “or” at the end of item (hh);

(f) by the addition to subsection (4)(a)(ii) of the following item:

“(ii) any company or close corporation if the company or close corporation has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided that this item ceases to apply if the company or close corporation has at any stage withdrawn any step so taken or does anything to invalidate any step so

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taken, with the result that the company or close corporation will not be liquidated, wound up or deregistered;” and

(g) by the substitution in subsection (4)(d) for the words preceding subparagraph (i) of the following words:

“ ‘**personal service**’ in relation to a company or close corporation, means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, [**broking, commercial arts,**] consulting, draftsmanship, education, engineering, [**entertainment,**] financial service broking, health, information technology, journalism, law, management, [**performing arts,**] real estate broking, research, [**secretarial services,**] sport, surveying, translation, valuation or veterinary science, if—”;

(2) Paragraph (a) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

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

(3) Paragraphs (d), (e), (f) and (g) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

Amendment of section 12F of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 26 of Act 35 of 2007, section 24 of Act 60 of 2008 and section 22 of Act 17 of 2009

25. (1) Section 12F of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(2A) For the purposes of this section where a taxpayer actually incurs expenditure to effect improvements as contemplated in section 12N, that expenditure shall be deemed to be the cost actually incurred by that taxpayer in respect of the acquisition of an airport asset or port asset contemplated in subsection (2).”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009

26. Section 12H of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection:

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

Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009

27. (1) Section 12I of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(1A) For the purposes of this section, if a taxpayer actually incurs expenditure to effect an improvement as contemplated in section 12N—

(a) the improvement shall be deemed to be a new and unused manufacturing asset; and

(b) the expenditure shall be deemed to be the cost of that new and unused manufacturing asset,

contemplated in subsection (2).”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 12L of Act 58 of 1962, as inserted by section 27 of Act 17 of 2009

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

(a) by the substitution in subsection (1) for paragraph (b) of the definition of “energy efficiency savings certificate” of the following paragraph:

“(b) the [**baseline**] reporting period energy use at the end of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;”;

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

“The amount of the allowance contemplated in subsection [(1)] (2) must be determined in accordance with the formula—

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

D

in which formula—”; and

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

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“(b) ‘B’ represents the energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment of the taxpayer as contemplated in paragraph (c) of the definition of energy efficiency savings certificate in [section 1] subsection (1);”.

(2) Subsection (1) comes into operation on the date on which section 27(1) of the Taxation Laws Amendment Act, 2009, comes into operation.

Insertion of section 12N in Act 58 of 1962

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

“Deductions for improvements not owned by taxpayer

12N. (1) If a taxpayer—

- (a) acquires a right of use or occupation of land or a building;
 - (b) incurs an obligation to effect an improvement on the land or to the building in terms of—
 - (i) a Public Private Partnership; or
 - (ii) an agreement in terms of which the right of use or occupation is granted, if the land or building is owned by—
 - (aa) the government of the Republic in the national, provincial or local sphere; or
 - (bb) any entity of which the receipts and accruals are exempt from tax in terms of section 10(1)(cA) or (t);
 - (c) actually incurs expenditure to effect the improvement contemplated in paragraph (b); and
 - (d) uses or occupies the land or building for the production of income or derives income from the land or building.
- the taxpayer must, for the purposes of any deduction contemplated in section 11(g), 11D, 12D, 12F, 12I, 13, 13bis, 13ter, 13quat, 13quin, 13sex or 36, be deemed to be the owner of the improvement so effected.

(2) This section does not apply if the taxpayer—

- (a) is a person carrying on any banking, financial services or insurance business; or

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(b) enters into an agreement whereby the right of use or occupation of the land or building is granted to any other person, unless—

- (i) the land or building is hired by one or more members of the general public in terms of such an agreement;
- (ii) the cost of maintaining the land or building and of carrying out repairs thereto required in consequence of normal wear and tear is borne by the taxpayer; and
- (iii) subject to any claim that the taxpayer may have against the other person by reason of the other person's failure to take proper care of the land or building, the risk of destruction or loss of or other disadvantage to the land or building is not assumed by that other person."

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of a right of use or occupation granted on or after that date.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001, section 30 of Act 60 of 2001 and section 3 of Act 4 of 2008

30. (1) Section 13 of the Income Tax Act, 1962, is hereby amended by the addition to the proviso to subsection (1) of the following paragraph:

“(d) in the case of expenditure actually incurred by a taxpayer to effect an improvement as contemplated in section 12N, such expenditure shall for the purposes of this section be deemed to be the cost to the taxpayer of any building or improvement contemplated in this subsection.”

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 13bis of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965 and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993, section 12 of Act 21 of 1994, section 21 of Act 59 of 2000 and section 4 of Act 4 of 2008

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31. (1) Section 13*bis* of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(1A) For the purposes of this section where a taxpayer actually incurs expenditure to effect improvements as contemplated in section 12N, that expenditure shall be deemed to be the cost to the taxpayer of any building, portion of a building or portion of any building improvements contemplated in subsection (1).”

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 13*ter* of Act 58 of 1962, as inserted by section 13 of Act 91 of 1982 and amended by section 14 of Act 94 of 1983, section 22 of Act 59 of 2000 and section 28 of Act 60 of 2008

32. (1) Section 13*ter* of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(2A) For the purposes of this section where a taxpayer actually incurs expenditure to effect an improvement as contemplated in section 12N, that expenditure shall be deemed to be the cost to the taxpayer of a residential unit contemplated in subsection (2).”

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 13*quat* of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008, section 29 of Act 60 of 2008 and section 29 of Act 17 of 2009

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

(a) by the insertion of the following subsection:

“(2A) For the purposes of this section, if a taxpayer actually incurs expenditure to effect an improvement as contemplated in section 12N, that expenditure shall be deemed to be the cost of the erection, extension, addition or improvement contemplated in subsection (2).”;

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

“(b) the total amount of the costs to the taxpayer (other than a taxpayer contemplated in paragraph (d)) of the erection, extension, addition or improvement and the extent that those costs relate to any portion of [the] a building [in respect of which a certificate of occupancy has been granted];”; and

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

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“(a) a municipality does not provide an annual report as contemplated in subsection (9) [or a quarterly report as contemplated in subsection (6)(f)] or the Commissioner reports to the Minister that the municipality has issued a certificate contemplated in subsection (4)(a) in respect of a building that is located outside an urban development zone; and”.

(2) Paragraph (a) of subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 13quin of Act 58 of 1962, as inserted by section 28 of Act 35 of 2007 and amended by section 30 of Act 60 of 2008

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

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

“(1) Daar word as ’n aftrekking van die inkomste van ’n belastingpligtige toegelaat ’n vermindering gelykstaande aan vyf persent van die koste vir daardie belastingpligtige van enige nuwe en ongebruikte gebou deur daardie belastingpligtige besit, of enige nuwe en ongebruikte verbetering tot enige gebou deur die belastingpligtige besit, indien daardie gebou of verbetering in geheel of [**gedeeltelik**] hoofsaaklik deur daardie belastingpligtige gebruik word gedurende die jaar van aanslag vir doeleindes van die voortbrenging van inkomste in die loop van die belastingpligtige se bedryf, behalwe die voorsiening van residensiële verblyf.”; and

(b) by the insertion of the following subsection:

“(1A) For the purposes of this section, if a taxpayer actually incurs expenditure to effect an improvement as contemplated in section 12N, that expenditure shall be deemed to be the cost to the taxpayer of any new and unused building or of any new and unused improvement to a building contemplated in subsection (1).”.

(2) Paragraph (b) of subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 13sex of Act 58 of 1962, as inserted by section 31 of Act 60 of 2008

35. (1) Section 13sex of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following proviso:

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“: Provided that if a taxpayer actually incurs expenditure to effect an improvement as contemplated in section 12N, that expenditure shall be deemed to be the cost to the taxpayer of any new and unused residential unit (or of any new and unused improvement to a residential unit), for the purposes of this section”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 18 of Act 58 of 1962, as amended by section 15 of Act 95 of 1967, section 12 of Act 76 of 1968, section 17 of Act 89 of 1969, section 14 of Act 52 of 1970, section 15 of Act 88 of 1971, section 12 of Act 104 of 1980, section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995, section 23 of Act 53 of 1999, section 26 of Act 59 of 2000, section 19 of Act 30 of 2002, section 25 of Act 31 of 2005, sections 2 and 17 of Act 8 of 2007, section 30 of Act 35 of 2007, section 1 of Act 3 of 2008, section 33 of Act 60 of 2008 and section 31 of Act 17 of 2009

36. (1) Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(c)(i) for items (aa), (bb) and (cc) of the following items:

- “(aa) **[R625]** R670 for each month in that year in respect of which those contributions were made solely with respect to the benefits of that taxpayer;
- (bb) **[R1 250]** R1 340 for each month in that year in respect of which those contributions were made with respect to the benefits of that taxpayer and one dependant; or
- (cc) where those contributions are made with respect to the taxpayer and more than one dependant, the amount referred to in item (bb) in respect of the taxpayer and one dependant plus **[R380]** R410 for every additional dependant for each month in that year in respect of which those contributions were made;”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

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, section 31 of Act 35 of 2007 and section 34 of Act 60 of 2008

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

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

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- “(c) **[the Government, any provincial administration or municipality]** any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a) **[or (b)]** to be used for purpose of any activity contemplated in Part II of the Ninth Schedule.”;
- (b) by the substitution for subsection (1A) of the following subsection:
- “(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the **[government, provincial administration or municipality]** department carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the **[government, provincial administration or municipality]** department shall be allowed as a deduction under subsection (1).”;
- (c) by the substitution in subsection (1C)(a) for subparagraph (i) of the following subparagraph:
- “(i) that donation is made by that person on or after 1 August 2002[, **but on or before 31 March 2010**]; and”;
- (d) by the substitution in subsection (2) for paragraph (a) of the following paragraphh:
- “(a) a receipt issued by the public benefit organisation, institution, board, body or agency or the **[government, provincial administration or municipality]** department concerned, on which the following details are given, namely—
- (i) the reference number of the public benefit organisation, institution, board, body or agency issued by the Commissioner for the purposes of this section;
 - (ii) the date of the receipt of the donation;
 - (iii) the name of the public benefit organisation, institution, board, body or agency or the **[government, provincial administration or municipality]** department which received the donation, together with an address to which enquiries may be directed in connection therewith;
 - (iv) the name and address of the donor;
 - (v) the amount of the donation or the nature of the donation (if not made in cash);
 - (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 organisation,

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

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

“A public benefit organisation, institution, board, body [, **government, provincial administration or municipality**] or department may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—”;

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

“(c) in the case of [**the government, provincial administration or municipality**] a department, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.”;

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

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

- (h) by the substitution in subsection (3)(a) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22(8)(C);
or

(ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8)(C) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or”.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 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,

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section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 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, Act 3 of 2008 and Act 60 of 2008

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

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

“(a) in the case of trading stock other than trading stock contemplated in paragraph (b), the cost price to such person of such trading stock, less such amount as the Commissioner may think just and reasonable as representing the amount by which the value of such trading stock, not being **[shares held by any company in any other company]** any financial instrument, has been diminished by reason of damage, deterioration, change of fashion, decrease in the market value or for any other reason satisfactory to the Commissioner; and”;

(b) by the substitution in subsection (8)(b) for subparagraph (iii) of the following subparagraph:

“(iii) trading stock of any company has on or after 21 June 1993 been distributed *in specie* [(**whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973)**),] to any shareholder of that company.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of section 22B of Act 58 of 1962, as inserted by section 34 of Act 17 of 2009

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

(a) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:

“(ii) holds more than 50 per cent of the equity [**share capital of]** shares in the resident company; and”;

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

“if the resident company or any company in which that resident company directly or indirectly holds more than 50 per cent of the equity [**share capital**] shares has, within a period of 18 months prior to the disposal, obtained any loan or advance or incurred any debt—”.

(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 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, section 20 of Act 8 of 2007 and section 37 of Act 60 of 2008

40. (1) Section 23 of the Income Tax Act, 1962, is hereby amended by the addition of the following paragraph:

“(p) any amount directly or indirectly paid from the proceeds of a policy of insurance as contemplated in section 11(w) to or in favour of—

(i) the employee or director of the taxpayer or a connected person in relation to the taxpayer; or

(ii) any relative of such employee or director.”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of expenditure incurred on or after that date.

Amendment of section 23I of Act 58 of 1962, as substituted by section 38 of Act 60 of 2008 and amended by section 36 of Act 17 of 2009

41. Section 23I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “taxable person” of the following paragraph:

“(b) the [**Government, a provincial administration or a municipality**] government of the Republic in the national, provincial or local sphere contemplated in section 10(1)(a) [**or (b)**];”.

Insertion of section 23K in Act 58 of 1962

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

“Limitation of deductions in respect of financial instruments

23K. (1) Where, during any year of assessment, any amount that is exempt from tax is received by or accrues to a taxpayer in respect of financial instruments, so much of the expenditure or losses incurred during that year by that taxpayer in respect of financial instruments as is equal to the aggregate of any amounts exempt from tax must, for the purposes of sections 11(a) and 24J(2), be deemed not to have been incurred in the production of income.

(2) For the purposes of subsection (1), any amount of expenditure or loss that represents the cost price of a financial instrument held by a taxpayer as trading stock must not be taken into account in determining the amount of expenditure or losses incurred by that taxpayer in respect of financial instruments.

(3) For the purposes of subsection (1), a financial instrument in respect of which any amount that is exempt from tax is received or accrues to a taxpayer during a year of assessment must not be taken into account in respect of that year in determining—

(a) whether amounts that are exempt from tax were received by or accrued to that taxpayer in respect of financial instruments; and

(b) the amount of expenditure or losses incurred by that taxpayer in respect of financial instruments,

if that financial instrument was funded solely from amounts other than amounts derived from a loan, debt, obligation or other similar arrangement, whether contingent or otherwise, in respect of which the taxpayer incurred any expenditure or losses.”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of expenditure and losses incurred in respect of years of assessment commencing on or after that date.

Insertion of section 24E in Act 58 of 1962

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

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“Allowance in respect of future expenditure by sporting bodies

24E. (1) If income is received by or accrued to a taxpayer contemplated in section 11E in respect of an event that will not recur in the following year of assessment, the taxpayer may for the purposes of determining taxable income deduct so much of that income as will be required to fund expenditure contemplated in section 11E that will be incurred in a future year of assessment.

(2) Any amount allowed to be deducted in terms of subsection (1) in any year of assessment must be deemed to be income received by or accrued to the taxpayer in the following year of assessment.”.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008.

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

44. (1) Section 24I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “local currency” of the following paragraph:

“(a) any exchange item which is attributable to any permanent establishment of a person outside the Republic, the functional currency **[used by]** of that permanent establishment **[for purposes of financial reporting]**: Provided that for purposes of this paragraph any exchange item shall be deemed not to be attributable to any such permanent establishment if the functional currency **[used by]** of that permanent establishment **[for purposes of financial reporting]** is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment;”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

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Insertion of section 24JA in Act 58 of 1962

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

“Shari’a compliant financing arrangements

24JA. (1) For the purpose of this section—

‘bank’ means any—

- (a) bank as defined in section 1 of the Banks Act, 1990 (Act No.94 of 1990);
- (b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or
- (c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

‘Diminishing Musharaka’ means an arrangement that complies with the precepts of Shari’a law that is concluded between a bank and a client of that bank whereby—

- (a) the bank and the client acquire joint ownership of an asset;
- (b) the bank and the client conclude an agreement in terms of which the client will purchase the bank’s ownership interest in the asset;
- (c) the amount of consideration payable by the client for the acquisition from the bank of the bank’s ownership interest in the asset is—
 - (i) equal to the amount of consideration payable by the bank to acquire its ownership interest in the asset; and
 - (ii) payable in instalments over a period of time as agreed upon between the client and the bank; and
- (d) the client pays rent to the bank in respect of the bank’s ownership interest in the asset until such time as the client becomes sole owner of the asset;

Provided that participation in such arrangement is open to members of the general public and the general public is informed that the arrangement is compliant with Shari’a law when invited to participate therein.

‘Mudarabah’ means an arrangement that complies with the precepts of Shari’a law that is concluded between a bank, or portfolio of a collective investment scheme, and any other person whereby—

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- (a) funds are deposited with the bank or contributed to the portfolio of a collective investment scheme by that person;
- (b) the anticipated profit from the funds deposited or contributed is divided proportionally in terms of an agreement concluded when the arrangement is entered into between the bank or portfolio of a collective investment scheme and that person;
- (c) the proportional division of the profits contemplated in paragraph (b) may not be altered over the lifetime of the arrangement; and
- (d) that person bears all the risk of loss in relation to the funds deposited or contributed in terms of that arrangement;

Provided that participation in such arrangement is open to members of the general public and the general public is informed that the arrangement is compliant with Shari'a law when invited to participate therein;

'Murabaha' means an arrangement that complies with the precepts of Shari'a law that is concluded between a bank and a client of that bank whereby—

- (a) the bank—
 - (i) will purchase an asset from a third party (hereinafter called the seller) for the benefit of the client on such terms and conditions as are agreed upon between the client and the seller; and
 - (ii) retains a right to take possession of the asset after the asset is delivered to the client in the event that the client defaults on any payment in terms of the arrangement;
- (b) the client will—
 - (i) in terms of the agreement within 180 days after the acquisition of the asset by the bank take transfer of the asset from the bank; and
 - (ii) pay to the bank an amount—
 - (aa) that exceeds the amount paid by the bank to the seller as consideration to acquire the asset on behalf of the client; and
 - (bb) paid in equal instalments that will not vary over the lifetime of the arrangement;

Provided that participation in such arrangement is open to members of the general public and the general public is informed that the arrangement is compliant with Shari'a law when invited to participate therein;

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(2) For the purposes of section 10(1)(i)(xv)(bb)(A) and (B), any profit received by or accrued in terms of a Mudarabah arrangement shall be deemed to be interest.

(3) Where any Murabaha arrangement is entered into—

- (a) the bank shall be deemed not to have acquired or disposed of the asset under the arrangement;
- (b) the client shall be deemed to have acquired the asset—
 - (i) from the seller for consideration equal to the amount paid by the bank to the seller; and
 - (ii) at such time as the bank acquired the property from the seller;
- (c) the arrangement shall be deemed to be an instrument for the purposes of section 24J;
- (d) the difference between the amount of consideration payable for the asset by the bank to the seller and the consideration payable to the bank by the client to acquire the asset as contemplated in paragraph (b)(ii)(aa) of the definition of Murabaha arrangement shall be deemed to be a premium payable for the purposes of section 24J; and
- (e) the amount of consideration payable by the bank to acquire the asset as contemplated in paragraph (a) of the definition of ‘Murabaha’ shall be deemed to be an issue price for the purposes of section 24J.

(4) Where any Diminishing Musharaka arrangement is entered into—

- (a) the bank shall be deemed not to have acquired any ownership interest in the asset that is acquired as contemplated in paragraph (a) of the definition of ‘Diminishing Musharaka’;
- (b) the client shall be deemed to have acquired and disposed of the bank’s ownership interest of the asset—
 - (i) for an amount equal to the amount of the consideration payable by the bank to the seller; and
 - (ii) at the time that the seller of the asset was divested of ownership of the asset by virtue of the transaction between the seller and the bank;
- (c) that arrangement shall be deemed to be an instrument for the purposes of section 24J;
- (d) any rental amount payable to the bank as contemplated in paragraph (d) of the definition of ‘Diminishing Musharaka’ shall be deemed to be interest for the purposes section 24J;
- (e) the amount of consideration payable by the bank to the seller to acquire the asset shall be deemed to be an issue price for the purposes of section 24J.”.

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

Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009

46. (1) Section 25BA of the Income Tax Act, 1962, is hereby amended—

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

“Amounts received by or accrued to certain portfolios of collective investment schemes [in securities] and holders of participatory interests in portfolios”; and

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

“Any amount, other than an amount of a capital nature, received by or accrued to any portfolio of a collective investment scheme [**in securities**], other than a portfolio of a collective investment scheme in property, must—”.

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

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

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

on or after that date.

Amendment of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000 and amended by section 37 of Act 60 of 2001, section 28 of Act 74 of 2002, section 44 of Act 45 of 2003, section 35 of Act 31 of 2005 and section 41 of Act 35 of 2007

47. (1) Section 25D of the Income Tax Act, 1962 is hereby amended—

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

“(2) Any amounts received by or accrued to, or expenditure incurred by, a person in any currency other than the currency of the Republic which are attributable to a permanent establishment of that person outside the Republic must be determined in the functional currency [**used by**] of that permanent establishment [**for purposes of financial reporting**] (other than the currency of any country in the common monetary area) and be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.”; and

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(b) by the substitution for paragraphs (a) and (b) of subsection (2A) of the following paragraphs:

- “(a) the other currency contemplated in that subsection is not the functional currency [**used by**] of that permanent establishment [**for purposes of financial reporting**]; and
- (b) the functional currency [**used for financial reporting purposes**] is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007, section 40 of Act 60 of 2008 and section 40 of Act 17 of 2009

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

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

“(cA) the liabilities contemplated in section 32(1)(a) and (b) 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**]: Provided that no deduction shall be allowed in terms of this paragraph in respect of a liability incurred as contemplated in paragraph (b).”;

(b) by the addition in subsection (7) of the following proviso to paragraph (c):

“: Provided that no deduction shall be allowed in terms of this paragraph in respect of a liability incurred as contemplated in paragraph (b)”; and

(c) by the substitution for subsection (9) of the following subsection:

“(9) The deduction contemplated in [**subsection**] subsections (2) and (7) shall be subject to such adjustments as may be made by the Commissioner.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of years of assessment commencing on or after that date.

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Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006 and section 21 of Act 3 of 2008

49. Section 29A of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (13) and (14).

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 36 of Act 59 of 2000, section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008 and section 41 of Act 17 of 2009

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

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the definition of “public benefit organisation” of the following subparagraph:

“(i) a non-profit company [contemplated] as defined in section [21] 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), or a trust or an association of persons that has been incorporated, formed or established in the Republic; or”;

(b) by the substitution in subsection (3)(b) for the proviso to subparagraph (i) of the following proviso:

“Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person [who died on or before 31 December 2003]”;

(c) by the substitution in subsection (3)(b)(iii) for item (cc) of the following item:

“(cc) [any department of state or administration] the government of the Republic in the national [or], provincial or local sphere [of government of the Republic], contemplated in section 10(1)(a) [or (b)];

(d) by the substitution for subsection (6) of the following subsection:

“(6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within six months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any [other organisation which is—

(a) approved in terms of this section; and

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- (b) **not a connected person in relation to such organisation]** public benefit organisation, institution, board or body or the government as contemplated in subsection (3)(b)(iii).”;
- (e) by the insertion of the following subsection:
- “(6A) As part of—
- (a) dissolution of an organisation contemplated in paragraph (a)(i) of the definition of ‘public benefit organisation’ in subsection (1); or
- (b) termination of the activities of a branch contemplated in paragraph (a)(ii) of that definition, if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic,
- the organisation or branch must transfer its assets to any public benefit organisation, institution, board or body or the government contemplated in subsection (3)(b)(iii).”;
- and
- (f) by the substitution for subsection (7) of the following subsection:
- “(7) If the organisation fails to transfer, or to take reasonable steps to transfer, its assets, as contemplated in subsection (6) or (6A), an amount equal to the market value of those assets which have not been transferred, less an amount equal to the *bona fide* liabilities of the organisation, must for purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment in which approval was withdrawn or the dissolution of the organisation or termination of activities took place.”.

(2) Paragraph (a) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

(3) Paragraphs (c), (d), (e) and (f) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of the transfer of assets occurring on or after that date.

Amendment of section 30A of Act 58 of 1962, as inserted by section 25 of Act 20 of 2006 and amended by section 26 of Act 8 of 2007, section 42 of Act 60 of 2008 and section 42 of Act 17 of 2009

- 51.** (1) Section 30A of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:

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“(1) For purposes of this Act, ‘recreational club’ means any non-profit company **[contemplated]** as defined in section **[21] 1** of the Companies Act, **[1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008)**, society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association.”

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

“(iii) it is required on dissolution to transfer its assets and funds to—

(aa) any other recreational club which is approved by the Commissioner in terms of this section **[or to]**;

(bb) a public benefit organisation contemplated in paragraph (a)(i) of the definition of a ‘public benefit organisation’ in section 30(1) which has been approved in terms of section 30(3);

(cc) any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i), which has as its sole or principal object the carrying on of any public benefit activity; or

(dd) the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);”

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

“(7) If the Commissioner has withdrawn the approval of a recreational club, that club must within six months after the date of that withdrawal (or such longer period as the Commissioner may allow) transfer or take reasonable steps to transfer its remaining assets to **[another recreational club approved in terms of this section or to a public benefit organisation contemplated in terms of paragraph (a)(i) of the definition of ‘public benefit organisation’ which has been approved in terms of section 30(3) and which club or organisation is not a connected person in relation to that club]** any recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).”;

(d) by the insertion of the following subsection:

“(7A) As part of its dissolution the club must transfer its assets to a recreational club, public benefit organisation, institution, board or body or the government, as contemplated in subsection (2)(a)(iii).”;

(e) by the substitution for subsection (8) of the following subsection:

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“(8) If the recreational club fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (7A), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that recreational club must for purposes of this Act be deemed to be an amount of taxable income which accrued to that recreational club during the year of assessment in which approval was withdrawn or the dissolution took place.”.

(2) Paragraph (a) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of the transfer of assets occurring on or after that date.

Insertion of section 30B in Act 58 of 1962

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

“Associations

30B. (1) For the purposes of this section—

‘entity’ means—

(a) any mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association; or

(b) any—

(i) non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);

(ii) society; or

(iii) other association of persons,

established to promote the common interests of persons (being members of the company, society or association of persons) carrying on any particular kind of business, profession or occupation,

approved by the Commissioner in accordance with subsection (2);

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'member' in the case of a fidelity or indemnity fund includes a contributor to that fund;
and

'mutual loan association' means an association of which the sole or principal object is to function as a voluntary savings association where participants make regular contributions into a common pool managed by the members for the mutual financial benefit of those members.

(2) The Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) if—

- (a) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;
- (b) the constitution or written instrument contemplated in paragraph (a) provides that—
 - (i) the entity must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;
 - (ii) no single person may directly or indirectly control the decision-making powers relating to that entity;
 - (iii) the entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
 - (iv) the entity is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
 - (v) no member may directly or indirectly have any personal or private interest in that entity;
 - (vi) substantially the whole of the activities of the entity must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
 - (vii) the entity may not have a share or other interest in any business, profession or occupation which is carried on by its members;
 - (viii) the entity must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
 - (ix) substantially the whole of the entity's funding must be derived from its annual or other long-term members or from an appropriation by the government of the Republic in the national, provincial or local sphere;

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- (x) the entity must as part of its dissolution transfer its assets to—
 - (aa) another entity approved by the Commissioner in terms of this section;
 - (bb) a public benefit organisation approved in terms of section 30;
 - (cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i); or
 - (dd) the government of the Republic in the national, provincial or local sphere;
- (xi) the persons contemplated in paragraph (b)(i) will submit any amendment of the constitution or written instrument of the entity to the Commissioner within 30 days of its amendment;
- (xii) the entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
- (xiii) the entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5).

(3) The requirements contained in subsection (2)(b)(iii) and (v) do not apply in respect of a mutual loan association.

(4) Where the constitution or written instrument of an entity does not comply with subsection (2)(b), the Commissioner may deem it to so comply if the persons who have accepted fiduciary responsibility for the funds and assets of that entity furnish the Commissioner with a written undertaking that the entity will be administered in compliance with that subsection.

(5) Where the Commissioner is—

- (a) satisfied that any entity approved in terms of subsection (2) has during any year of assessment in any material respect; or
- (b) during any year of assessment satisfied that any such entity has on a continuous or repetitive basis,

failed to comply with this section, or the constitution or written instrument under which it was established to the extent that it relates to this section, the Commissioner must notify the entity that he or she intends to withdraw approval of the entity if corrective steps are not taken by the entity within the period stated in the notice.

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

(7) If the Commissioner has withdrawn the approval of an entity as contemplated in subsection (6) the entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).

(8) If an entity is wound up or liquidated, the entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any entity, public benefit organisation, institution, board or body or the government of the Republic, contemplated in subsection (2)(b)(x).

(9) If an entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) or (8), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that entity during the year of assessment in which the withdrawal of approval in terms of subsection (6) or the winding-up or liquidation contemplated in subsection (8) took place.”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

Amendment of section 31 of Act 58 of 1962, as amended by section 23 of Act 21 of 1995, section 37 of Act 30 of 1998, section 31 of Act 53 of 1999, section 37 of Act 59 of 2000, section 16 of Act 5 of 2001, section 46 of Act 45 of 2003, section 44 of Act 35 of 2007 and section 43 of Act 60 of 2008

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

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

“ **‘financial assistance’** includes—

(a) any loan, advance or debt; or

(b) the provision of any security or guarantee.”;

(b) by the deletion in subsection (1) of the definitions of “goods” and “services”;

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

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“(1A) For the purposes of subsection (2), where any **[supply of goods or services has been effected]** transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected in respect of any intellectual property as contemplated in the definition of ‘intellectual property’ in section 23I(1) or knowledge, **‘connected person’ [shall mean] means** a connected person as defined in section 1, provided that the expression ‘and no shareholder holds the majority voting rights of such company’ in paragraph (d)(v) of that definition must be disregarded.”;

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

“(2) Where any **[supply of goods or services]** transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected—

(a) between or for the benefit of—

(i) (aa) a resident; and

(bb) any other person who is not a resident;

(ii) (aa) a person who is not a resident; and

(bb) a permanent establishment in the Republic of any other person who is not a resident;

(iii) (aa) a person who is a resident;

(bb) a permanent establishment outside the Republic of any other person who is a resident;

[(b)] **[between]** and those persons **[who]** are connected persons in relation to one another; and

[(c)](b) **[at a price which is either**—

(i) **less than the price which such goods or services might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm’s length (such price being the arm’s length price); or**

(ii) **greater than the arm’s length price]**

any term or condition of that transaction, operation, scheme, agreement or understanding—

(i) is different from any term or condition that would have existed had those persons been independent persons dealing at arm’s length; and

(ii) results or will result in any tax benefit as defined in section 80L being derived by any party to that transaction, operation, scheme, agreement or understanding.

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the Commissioner may [, **for the purposes of this Act in relation to either the acquiror or supplier, in the determination of**] determine the taxable income of **[either the acquiror or supplier, adjust the consideration in respect of the transaction to reflect an arm's length price for the goods or services]** any party to that transaction, operation, scheme, agreement or understanding as if that transaction, operation, scheme, agreement or understanding had been entered into on the terms and conditions that would have existed had the parties to that transaction, operation, scheme, agreement or understanding been independent persons dealing at arm's length.”;

- (e) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:

“Where any person who is not a resident (hereinafter referred to as the investor) has granted financial assistance [**contemplated in paragraph (c) of the definition of ‘services’ in subsection (1)**], whether directly or indirectly, to—”;

- (f) by the deletion in subsection (3)(a) of subparagraph (ii);

- (g) by the insertion in subsection (3)(a) after subparagraph (ii) of the following subparagraph:

“(iii) a permanent establishment in the Republic of any other person who is not a resident,”;

- (h) by the substitution in subsection (3) for the words following subparagraph (iii) of the following words:

“and the Commissioner is, having regard to the circumstances of the case, of the opinion that the value of the aggregate of all such financial assistance [**is excessive in relation to the fixed capital (being share capital, share premium, accumulated profits, whether of a capital nature or not, or any other permanent owners’ capital, other than permanent capital in the form of financial assistance as so contemplated) of such connected person or recipient]** exceeds the financial assistance which would have been granted had the investor and the connected person or person with a permanent establishment been independent persons dealing at arm's length, any interest, finance charge or other consideration payable for or in relation to or in respect of the financial assistance [shall] must, to the extent to which it relates to the amount which is excessive as contemplated in this paragraph, be disallowed as a deduction for the purposes of this Act.”;

- (i) by the addition in subsection (3) of the following proviso to paragraph (a):

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“: Provided that where the investor has granted financial assistance to a resident that is a headquarter company, this paragraph will not apply to so much of the financial assistance that is directly applied for the purposes of granting any financial assistance to any foreign company in which that headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 20 per cent of the equity shares and voting rights”;

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

“(b) For the purposes of paragraph (a), financial assistance granted indirectly **[shall] must** be deemed to include any financial assistance granted by any third person who is not a connected person in relation to the investor [,] or a connected person contemplated in paragraph (a) **[or the recipient]**, where **[such] that** financial assistance has been granted by arrangement, directly or indirectly, with the investor and on the strength of any financial assistance granted, directly or indirectly, by the investor or any connected person in relation to the investor, to **[such] that** third person.”; and

(k) by the insertion in subsection (3) of the following paragraph:

“(c) For the purposes of this subsection, ‘connected person’ means a connected person as defined in section 1, provided that the expression ‘and no shareholder holds the majority voting rights of such company’ in paragraph (d)(v) of that definition must be disregarded.”

(2) Paragraphs (a), (b), (c), (d), (e) and (k) of subsection (1) come into operation on the date of promulgation of this Act and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (i) of subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraphs (h) and (j) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

(5) Paragraphs (f) and (g) of subsection (1) come into operation on 1 October 2010 and apply in respect of interest, finance charges or other consideration that is received or accrues on or after that date.

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980,

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section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008 and section 43 of Act 17 of 2009

54. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (11) to the proviso to paragraph (d) of the definition of “capital expenditure” of the following paragraph:

“(dd) where a taxpayer actually incurs expenditure as contemplated in section 12N in respect of the items contemplated in subparagraph (i), (ii), (iii), (iv) or (v), that expenditure shall be deemed to be expenditure for the purposes of this section.”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984, section 32 of Act 53 of 1999, section 36 of Act 30 of 2000, section 43 of Act 60 of 2001, section 34 of Act 74 of 2002, section 213 of Act 45 of 2003, section 30 of Act 8 of 2007, section 24 of Act 3 of 2008 and section 45 of Act 17 of 2009

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

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

“any other company, not being a private company as defined in section [20] 1 of the Companies Act, [1973 (Act No. 61 of 1973) (as in force on 1 January 1974)] 2008 (Act No. 71 of 2008), nor a close corporation, in respect of which the Commissioner is satisfied—”;

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

“(v) any man or his wife or any minor child of any man or his wife, if one or more of such persons are directly or indirectly interested (otherwise than by virtue of any shareholding in any public company or any private company which is interested in the shares of the company through a direct or indirect interest in the [issued share capital of] equity shares in a public company) in altogether more than [fifteen] 15 per cent[.] of any class of equity shares issued by the company;”;

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(c) by the substitution in subsection (4)(c) for the words following subparagraph (ii) of the following words:

“by virtue of **[his]** the said person being a shareholder in any private company and such interest is not attributable to a direct or indirect interest of such private company in the **[issued share capital of]** equity shares in a public company, the said person shall be deemed to be interested in only that portion of such shares as the Commissioner is satisfied such person would be entitled to receive if every company through which that person is interested in those shares were to be wound up or liquidated and the assets of each such company were, without regard to its liabilities, to be distributed among its shareholders;” and

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

“(a) where persons are jointly interested, whether directly or indirectly, but otherwise than through a direct or indirect interest in the **[issued share capital]** equity shares of a public company, in the shares of any company, each such person shall be deemed to be interested in only such proportion of those shares as the Commissioner is satisfied he would be entitled to receive if the joint interest of all such persons in such shares were to be divided between such persons.”.

(2) Subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of section 40A of Act 58 of 1962, as inserted by section 25 of Act 121 of 1984 and amended by section 28 of Act 101 of 1990

56. (1) Section 40A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where **[any company registered under the Companies Act, 1973 (Act No. 61 of 1973), has under the provisions of section 27 of the Close Corporations Act, 1984 (Act No. 69 of 1984), been converted into a close corporation, or]** any close corporation has **[under the provisions of section 29C of the Companies Act, 1973,]** been converted into a company, such company and such close corporation shall for the purposes of this Act be deemed to be and to have been one and the same company.”.

(2) Subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

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Amendment of section 41 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, section 32 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, section 128 of Act 60 of 2008 and section 47 of Act 17 of 2009

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

- (a) by the insertion in subsection (1) of the following definition before the definition of “shareholder”:
- “**‘resident’** does not include any headquarter company;”;
- (b) by the substitution in subsection (1) for the definition of “allowance asset” of the following definition:
- “**‘allowance asset’** means—
- (a) a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss; or
- (b) any debt contemplated in section 11(i) or (j);”;
- (c) by the substitution in subsection (1) for subparagraph (bb) of paragraph (i) of the proviso to the definition of “group of companies” of the following subparagraph:
- “(bb) that company is a non-profit company [**contemplated**] as defined in section [21] 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”
- (d) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the definition of “prescribed proportion” of the following words:
- “where equity shares in [**the equity share capital of**] that company are to be disposed of between members of the same group of companies, either—”;
- (e) by the deletion in subsection (1) of paragraph (b) of the definition of “trading stock”; and
- (f) by the substitution for subsection (7) of the following subsection:
- “(7) An amount contemplated in paragraph (j) of the definition of ‘gross income’ in section 1 and an amount to be included in gross income in terms of paragraph 14 of the First Schedule must for purposes of this Part be deemed to be an [**amount**] allowance that must be recovered or recouped.”.

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(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2011 and applies in respect of transactions entered into during years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transfers taking place on or after that date.

(4) Paragraphs (c) and (d) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

(5) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date.

(6) Paragraph (f) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of transactions entered into on or after that date.

Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008 and section 48 of Act 17 of 2009

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

(a) by the addition in subsection (1) to paragraph (b) of the definition of “asset-for-share transaction” of the following proviso:

“: Provided that this paragraph does not apply in respect of any transaction which meets the requirements of paragraph (a) in terms of which a person disposes of an equity share in a listed company or a portfolio of a collective investment scheme in securities disposes of an equity share to any other company and after that disposal, together with any other transaction that is concluded—

(i) on the same terms as that transaction; and

(ii) within a period of 90 days after that disposal,

that other company holds—

(aa) at least 35 per cent of the equity shares of that listed company or portfolio; or

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- (bb) at least 25 per cent of the equity shares of that listed company or portfolio if no shareholder other than that other company holds an equal or greater amount of equity shares in the listed company or portfolio;”;
- (b) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:
- “**[subject to paragraph (bA),]** that person and that company must, for purposes of determining—”;
- (c) by the addition in subsection (2) to paragraph (b) of the following proviso:
- “: Provided that this paragraph does not apply in respect of any asset for share transaction in terms of which a person disposes of an equity share in a listed company or a portfolio of a collective investment scheme in securities disposes of an equity share to any other company and after that disposal, together with any other asset-for-share transaction that is concluded—
- (i) on the same terms as that asset-for-share transaction; and
- (ii) within a period of 90 days after that disposal,
- that other company holds—
- (aa) at least 35 per cent of the equity shares of that listed company or portfolio; or
- (bb) at least 25 per cent of the equity shares of that listed company or portfolio if no shareholder other than that other company holds an equal or greater amount of equity shares in the listed company or portfolio;”;
- (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’]** portfolio of a collective investment scheme in securities 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 deletion in subsection (2) of paragraph (bA); and
- (f) by the addition in subsection (7)(b) to subparagraph (i) of the following proviso:
- “: Provided that this subparagraph must not apply to any asset that constitutes trading stock that is of the same or equivalent quality as trading stock that is regularly and continuously disposed of by that company”.

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(2) Paragraphs (a), (b), (c) and (e) of subsection (1) come into operation on 1 October 2010 and apply in respect of transactions entered into on or after that date.

(3) Paragraph (d) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

(4) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date.

Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, section 50 of Act 60 of 2008 and section 49 of Act 17 of 2009

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

(a) by the addition in subsection (5)(b) to subparagraph (i) of the following proviso:

“: Provided that this subparagraph must not apply to any asset that constitutes trading stock that is of the same or equivalent quality as trading stock that is regularly and continuously disposed of by that resultant company”;

(b) by the deletion of subsection (9A);

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

“(10) For the purposes of section 64B, so much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)(b) as does not exceed [**the amalgamated company’s profits which are available for distribution as contemplated in section 64C(4)(c)**] the market value of all the assets of the amalgamated company less—

(a) the liabilities; and

(b) the sum of the contributed tax capital of all the classes of shares,

of the amalgamated company must be deemed to be a dividend declared and

distributed [**out of profits of**] by that amalgamated company to that person and to have accrued as a dividend to that person on the date on which that person became entitled thereto.”;

(d) by the substitution in subsection (14) for paragraph (c) of the following paragraph:

“(c) the resultant company is a non-profit company [**contemplated**] as defined in section [21] 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”.

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(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date.

(3) Paragraphs (b), (c) and (d) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No.71 of 2008), comes into operation.

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 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, section 28 of Act 3 of 2008 and section 51 of Act 60 of 2008

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

(a) by the addition in subsection (4) to paragraph (a) of the following proviso:

“: Provided that this subsection must not apply to any asset that constitutes trading stock that is of the same or equivalent quality as trading stock that is regularly and continuously disposed of by the transferee company”;

(b) by the substitution in subsection (4)(b)(ii) for item (aa) of the following item:

“(aa) the greatest amount contemplated in paragraph (j) or (n) of the definition of ‘gross income’ that would have been 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, had subsection (3) not applied in respect of that disposal; or”; and

(c) by the addition to subsection (5)(b)(i) of the following proviso:

“: Provided that this subsection must not apply to any asset that constitutes trading stock that is of the same or equivalent quality as trading stock that is regularly and continuously disposed of by that transferee company”.

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 January 2010 and apply in respect of transactions entered into on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of cessations 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, section 29 of Act 3 of 2008 and section 52 of Act 60 of 2008

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

(a) by the substitution in subsection (7)(b) for subparagraph (ii) of the following subparagraph:

“(ii) the [**Government, a provincial administration or a municipality**] government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a);” and

(b) by the deletion of subsection (6).

(2) Subsection (1)(b) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008, section 53 of Act 60 of 2008 and section 50 of Act 17 of 2009

62. (1) Section 47 of the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (i) of subsection (4)(b) of the following proviso:

“: Provided that this subparagraph must not apply to any asset that constitutes trading stock that is of the same or equivalent quality as trading stock that is regularly and continuously disposed of by that holding company”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of transactions entered into on or after that date.

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966 section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act 60 of 2001, section 24 of Act 30 of 2002, section 35 of Act 74 of 2002, section 56 of Act 45 of 2003, section 38 of Act 32 of 2004, section 45 of Act 31 of 2005, section 27 of Act 9 of 2006 and section 38 of Act 8 of 2007

63. Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) by or to any person (including any sphere of government) referred to in section 10(1)(a)[, (b)], (cA), (cE), (cN), (cO), (d) or (e);”.

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Amendment of section 64B of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 35 of Act 89 of 1969, section 20 of Act 52 of 1970, section 19 of Act 90 of 1972, section 41 of Act 85 of 1974, section 33 of Act 94 of 1983, section 7 of Act 108 of 1986, section 32 of Act 90 of 1988, section 34 of Act 113 of 1993, section 34 of Act 113 of 1993, section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 85 of Act 35 of 2007, section 32 of Act 3 of 2008, section 55 of Act 60 of 2008 and section 51 of Act 17 of 2009

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

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

“(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of 10 per cent of the net amount, as determined in terms of subsection (3), of any dividend declared by any company, other than a headquarter company, which is a resident.”

(b) by the deletion in subsection (5) of the word “and” at the end of paragraph (i); and

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

“(k) any dividend declared to a natural person which constitutes a transfer of an interest in a residence contemplated in paragraph 51 or 51A of the Eighth Schedule; **[and]**”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

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

(4) Paragraph (c) of subsection (1) comes into operation on 1 October 2010 and applies in respect of distributions made on or after that date and before 1 January 2013.

Amendment of section 64C of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977, section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1986, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of

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Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007, section 33 of Act 3 of 2008 and section 52 of Act 17 of 2009

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

- (a) by the insertion in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “share incentive scheme”;
- (b) by the deletion in subsection (1) of paragraph (b) of the definition of “share incentive scheme”;
- (c) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 - “(e) that amount represents—
 - (i) additional taxable income or reduced assessed loss of that company [**by virtue of any transaction with the shareholder or a connected person in relation to such a shareholder, the consideration of which is adjusted**] as a result of a determination made by the Commissioner in terms of section 31(2); or
 - (ii) any amount of interest, finance charge or other consideration that is disallowed as a deduction in accordance with [the provisions of] section 31(3);”.
- (d) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
 - “(f) the company ceases to be a resident to the extent [**profits and reserves of that company are available for distribution immediately before so ceasing to be a resident (including any amount deemed in terms of the definition of “dividend” in section 1 to be a profit available for distribution) : Provided that any prohibition or limitation on any distribution contained in the company’s memorandum and articles of association or founding statement or any agreement must be disregarded**] that the market value of all the assets of the company on the date immediately before the day on which the company ceases to be a resident exceeds—
 - (i) the liabilities of that company as at that date; and
 - (ii) the sum of the contributed tax capital of all the classes of shares of that company as at that date;”.
- (e) by the substitution for the proviso to subsection (2) of the following proviso:

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“: Provided that, for purposes of this subsection, in determining whether a person is a shareholder or connected person in relation to a shareholder in relation to any company, no regard must be had to any share that is a listed share”;

(f) by the deletion in subsection (4) of paragraph (a);

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

“(c) to so much of any amount (other than an amount contemplated in subsection (2)(e)) as exceeds the **[company’s profits and reserves which are available for distribution, including any amount deemed in terms of the definition of “dividend” in section 1 to be a profit available for distribution: Provided that any prohibition or limitation on any such distribution contained in the company’s memorandum and articles of association or founding statement or any agreement shall be disregarded in the application of this paragraph]** market value of all the assets, less the liabilities, of the company;”.

(2) Paragraphs (a), (b), (d), (f) and (g) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2011 and applies in respect of any transaction, operation, scheme, agreement or understanding entered into or effected on or after that date.

(4) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 January 2009.

Amendment of section 64D of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

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

(a) by the deletion of the word “or” at the end of paragraph (d) of the definition of “regulated intermediary”;

(b) by the addition of the word “or” at the end of paragraph (e) of the definition of “regulated intermediary”; and

(c) by the insertion in the definition of “regulated intermediary” of the following paragraph:

“(f) transfer secretary that is a juristic person or partnership and that—

(i) satisfies the requirements of section 87(1) of the Companies Act, 2008 (Act No. 71 of 2008); and

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(ii) has been approved by the Commissioner subject to such limitations, conditions and requirements as may be determined by the Commissioner.”.

(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 64E of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

67. (1) Section 64E of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(2) 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] any company other than a headquarter company.”.

(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 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

68. (1) Section 64F of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (i) of the following paragraph:

“(i) a shareholder that is a natural person and the dividend constitutes a transfer of an interest in a residence contemplated in paragraph 51(2) or 51A(1) of the Eighth Schedule;”.

(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 and applies in respect of dividends paid on or after that date.

Amendment of section 64G of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

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

(a) by the substitution for subsections (2) and (3) of the following subsections:

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

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- (a) the person to whom the payment is made has—
- (i) by a date determined by the company; or
 - (ii) if the company did not determine a date as contemplated in subparagraph (i), by the date of payment of the dividend, submitted to the company—
 - (aa) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F; and
 - (bb) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner;
- (b) the beneficial owner forms part of the same group of companies, as defined in section 41, as the company that paid the dividend; or
- (c) the payment is made to a regulated intermediary.

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

- (a) by a date determined by the company; or
 - (b) if the company did not determine a date as contemplated in paragraph (a), by the date of payment of the dividend, submitted to the company—
 - (i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and
 - (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner.”; and
- (b) by the insertion of the following subsection:
- “(4) If a person to whom a dividend is paid submits to the company that paid the dividend a declaration contemplated in subsection (2)(a) or (3), the company may rely on the declaration during the period commencing on the date of submission and terminating on the date on which the person, pursuant to the undertaking contemplated in subsection (2)(a) or (3), informs the company that the beneficial owner has ceased to be the beneficial owner.”.

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(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 64H of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

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

(a) by the substitution for subsections (2) and (3) of the following subsections:

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

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

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

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

(aa) a [written] declaration by the beneficial owner in such form as may be prescribed by the Commissioner [may prescribe] that the dividend is exempt from the dividends tax in terms of section 64F; and

(bb) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the beneficial owner cease to be the beneficial owner; or

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

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

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

(b) if the regulated intermediary did not determine a date as contemplated in paragraph (a), by the date of payment of the dividend, submitted to the regulated intermediary—

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

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(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the beneficial owner cease to be the beneficial owner.”; and

(b) by the insertion of the following subsection:

“(4) If a person to whom a dividend is paid submits to the regulated intermediary that paid the dividend a declaration contemplated in subsection (2)(a) or (3), the regulated intermediary may rely on the declaration during the period commencing on the date of submission and terminating on the date on which the person, pursuant to the undertaking contemplated in subsection (2)(a) or (3), informs the regulated intermediary that the beneficial owner has ceased to be the beneficial owner.”.

(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 64K of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

71. (1) Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A beneficial owner is liable for the dividends tax and must pay the tax by the last day of the month following the month during which the dividend is paid by the company that declared the dividend, unless—

(a) the tax has been paid by any other person; or

(b) the tax has been withheld by a regulated intermediary in terms of section 64H(1).”.

(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 64O of Act 58 of 1962, as inserted by section 54 of Act 17 of 2009

72. (1) Section 64O of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “market-related rate” of the following definition:

“ ‘**market-related rate**’, in relation to financial assistance provided by a company for a period during a year of assessment, means—

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[(a) where the financial assistance is provided to a natural person or a trust, the average of the official rate of interest, as defined in paragraph (1) of the Seventh Schedule, for that period; or

(b) where the financial assistance is provided to a person other than a natural person or a trust—]

[(i)](a) [in the case of] if the financial assistance [that] is denominated in rands, a rate of interest equal to the average of the South African repurchase rate plus 100 basis points for the period; or

[(ii)](b) [in the case of] if the financial assistance [that] is denominated in any currency other than rands, a rate of interest equal to the average of the equivalent of the South African repurchase rate applicable in that currency plus 100 basis points for the period;”.

(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 64Q of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

73. (1) Section 64Q of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) the company (whether alone or together with any other company forming part of the same group of companies as the company) directly or indirectly holds at least 20 per cent of the **[total]** equity **[share capital of]** shares in that other company; and”.

(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 and applies in respect of dividends paid on or after that date.

Amendment of paragraph 11 of First Schedule to Act 58 of 1962, as substituted by section 44 of Act 113 of 1993 and amended by section 32 of Act 36 of 1996 and section 41 of Act 53 of 1999

74. (1) Paragraph 11 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (c) for item (iii) of the following item:

“(iii)where the farmer is a company, has on or after 21 June 1993 been distributed *in specie* (whether such distribution **[occurred by means of a dividend, including a**

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liquidation dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973)] was effected by way of a dividend or a capital distribution), to a shareholder of such company; or”.

(2) Subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 17 of Act 104 of 1979, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998, section 82 of Act 45 of 2003, section 43 of Act 32 of 2004, section 46 of Act 8 of 2007, section 61 of Act 35 of 2007, section 36 of Act 3 of 2008, section 58 of Act 60 of 2008 and section 56 of Act 17 of 2009

75. (1) Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “lump sum benefit” of the following definition:

“ ‘**lump sum benefit**’ includes—

- (a) any amount determined in respect of the commutation of an annuity or portion of an annuity if the annuity is provided in consequence of membership or past membership by any person of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and
- (b) any fixed or ascertainable amount (other than an annuity) payable by or provided in consequence of membership or past 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(11);”.

(2) Subsection (1) comes into operation on 1 March 2011.

Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as substituted by section 57 of Act 17 of 2009

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

(a) by the substitution in subparagraph (1)(a) for the words preceding subitem (i) of the following words:

“any amount received by or accrued to that person by way of a lump sum benefit derived by that person in consequence of or following upon—”;

(b) by the deletion in subparagraph (1)(a) of the word “or” at the end of subitem (i);

(c) by the substitution in subparagraph (1)(a) for the proviso to subitem (ii) of the following proviso:

“Provided that this subitem does not apply to any amount received by or accrued to a person by way of a lump sum where that person’s employer is a company and that person was at any time a director of that company or at any time held more than five per cent of the **[issued share capital]** equity shares or members’ interest in that company; or”;

(d) by the addition to subparagraph (1)(a) of the following subitem:

“(iii) the commutation of an annuity or portion of an annuity,”;

(e) by the substitution in subparagraph (1)(b) for subitem (iA) of the following subitem:

“(iA) assigned in terms of a divorce order granted on or after 13 September 2007 under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), to the extent that the amount so assigned is deducted from the minimum individual reserve of that person’s former spouse in terms of section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or is so deducted in terms of section 37D(1)(d)(ii) of that Act as a result of the deduction contemplated in section 37D(1)(d)(i) of that Act;”.

(2) Paragraphs (a), (b) and (d) of subsection (1) come into operation on 1 March 2011.

(3) Paragraph (c) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

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

Amendment of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983, section 50 of Act 30 of 1998, section 50 of Act 8 of 2007, section 40 of Act 3 of 2008, section 62 of Act 60 of 2008 and section 59 of Act 17 of 2009

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

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

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

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

“Provided that—

- (i) so much of any tax payable as is due to the provisions of this paragraph may be recovered from the person [**to**] by whom [**or in whose favour**] the lump sum benefit in question [**accrues**] is received;
- (ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a member or past member of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such member or past member;
- (iii) where any such lump sum benefit becomes payable but the dependants or nominees of that member or past member elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; and
- (v) where any such lump sum benefit is paid to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), no lump sum benefit shall be deemed to have so accrued”.

(2) Subsection (1) comes into operation on 1 March 2011.

Insertion of paragraph 3A in Second Schedule to Act 58 of 1962

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78. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 3 of the following paragraph:

“3A. Any lump sum benefit which becomes recoverable from—

(a) a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

(b) an insurer as defined in section 29A(1) if that lump sum benefit is derived directly or indirectly from a lump sum benefit contemplated in subparagraph (a),

in consequence of or following upon the death of any person other than a member or past member of that fund must, on the date of payment of that lump sum benefit, be deemed to have accrued to that person immediately prior to the death of that person: Provided that—

(i) so much of any tax payable as is due to the provisions of this paragraph may be recovered from the person by whom the lump sum benefit in question is received;

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

(iii) where any such lump sum benefit becomes payable but the dependants or nominees of that person elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity;
and

(iv) where any such lump sum benefit is paid to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), no lump sum benefit shall be deemed to have so accrued.”

(2) Subsection (1) comes into operation on 1 March 2011.

Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008, section 63 of Act 60 of 2008 and section 60 of Act 17 of 2009

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

“(1) 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 shall, subject to paragraph 3, be deemed to have accrued to such member on the earliest of the date—

(a) on which he or she elects to have the benefit paid to him or her;

(b) on which any amount is deducted from the benefit in terms of section 37D(1)(a) or (b) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

(c) on which the benefit is transferred to another pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or

(d) of his or her death,

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.”.

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of lump sum benefits deemed to have accrued on or after that date.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009

80. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(b) for subitem (v) of the following subitem:

“(v) any other amounts in respect of which formula C applies, which have been paid into **[such funds]** a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the taxpayer’s benefit by a pension fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1, less the amount represented by symbol A when applying that formula,”.

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

Amendment of paragraph 1 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

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

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(a) by the insertion before the definition of “micro business” of the following definition:

“ **‘investment income’** means—

(i) any income in the form of rental derived in respect of immovable property, interest, dividends, royalties, or income of a similar nature; and

(ii) any proceeds derived from the disposal of financial instruments;”; and

(b) by the substitution for the definition of “professional service” of the following definition:

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

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

Amendment of paragraph 3 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 63 of Act 17 of 2009

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

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

“(b) more than **[10] 20** per cent of that person’s total receipts during that year of assessment consists of investment income **[as defined in section 12E] and** income from the rendering of a professional service;”;

(b) by the deletion of subparagraph (d);

(c) by the substitution in subparagraph (e) for items (i) and (ii) of the following items:

“(i) immovable property **[, to the extent that it was]** used mainly for business purposes; and

(ii) any other asset of a capital nature used mainly for business purposes, other than any financial instrument”;

(d) by the substitution in the proviso to subparagraph (f)(iii) for paragraphs (aa) and (bb) of the following paragraphs:

“(aa) has not during any year of assessment—

(A) carried on any trade; and

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[(bb) has not during any year of assessment]

(B) owned assets, the total market value of which exceeds R5 000; or

(bb) has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided further that this subitem ceases to apply if the company has at any stage withdrawn any step so taken or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered.”;

(e) by the deletion of the word “or” at the end of item (ii) in subparagraph (g);

(f) by the addition of the word expression “; or” at the end of item (iii) in subparagraph (g);

(g) by the addition to subparagraph (g) of the following item:

“(iv) that partnership is registered as a vendor in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).”; and

(h) by the addition of the following subparagraph:

“(h) that person is registered as a vendor in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).”.

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

(3) Paragraphs (e), (f), (g) and (h) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 March 2011.

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

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

“Taxable Turnover

5. The taxable turnover of a registered micro business in relation to any year of assessment consists of all amounts not of a capital nature received by that registered micro business during that year of assessment from carrying on business activities in the Republic, including amounts described in paragraph 6 and excluding amounts described in paragraph 7, less any amounts refunded to any person by that registered micro business in respect of goods or services supplied by that registered micro business to that person during that year of assessment or any previous year of assessment.”.

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(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

Amendment of paragraph 6 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

84. (1) Paragraph 6 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (a) for items (i) and (ii) of the following items:

“(i) immovable property[, **to the extent that it was**] mainly used for business purposes, other than trading stock; and

(ii) any other asset used mainly for business purposes, other than any financial instrument.”;

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

“(b) in the case of a company, investment income [**as defined in section 12E**] (other than dividends)[; **and**].”;

(c) by the deletion of subparagraph (c).

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

Amendment of paragraph 7 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

85. (1) Paragraph 7 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(a) in the case of a natural person, investment income [**as defined in section 12E**].”;

(b) by the addition of a semicolon and the word “and” at the end of subparagraph (c); and

(c) by the insertion of the following subparagraph:

“(d) any amount received by that registered micro business from any person by way of a refund in respect of goods or services supplied by that person to that registered micro business.”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment ending on or after 1 January 2011.

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Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as amended by section 26 of Act 96 of 1985, section 33 of Act 65 of 1986, section 28 of Act 85 of 1987, section 24 of Act 70 of 1989, section 55 of Act 101 of 1990, section 49 of Act 129 of 1991, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000, section 59 of Act 59 of 2000, section 62 of Act 74 of 2002 and section 47 of Act 3 of 2008

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

“ ‘official rate of interest’ means—

- (a) in the case of a loan which is denominated in the currency of the Republic, **[the] a** rate of interest **[fixed by the Minister from time to time by notice in the *Gazette*]** equal to the South African repurchase rate plus 100 basis points; or
- (b) in the case of a loan which is denominated in any other currency, a **[market related]** rate of interest that is the equivalent of the South African repurchase rate applicable in that currency plus 100 basis points:

Provided that where a new repurchase rate or equivalent rate is determined, the new rate of interest applies for the purposes of this definition from the first day of the month following the date on which that new repurchase rate or equivalent rate came into operation;”.

(2) Subsection (1) comes into operation on 1 March 2011.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice No. 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice No. R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice No. R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999 and section 56 of Act 31 of 2005

87. (1) Paragraph 7 of the Seventh 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) where such motor vehicle (not being a vehicle in respect of which paragraph (b)(ii) of this definition applies) was acquired by the employer under a *bona fide* agreement of sale or exchange concluded by parties acting at arm’s length, the original cost thereof to **[him] the employer** (excluding any finance charge[,] or

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interest [**or sales tax**] payable by [**him, or value-added tax borne by him ,**] the employer in respect of [**his**] the employer's acquisition thereof); or”;

- (b) by the substitution in subparagraph (1)(b) for the words following subitem (ii) of the following words:

“the retail market value thereof at the time the employer first obtained the right of use of the vehicle or, where at such time such lease was [**a financial lease for the purposes of the Sales Tax Act, 1978 (Act No. 103 of 1978), the cash value thereof as determined under Schedule 4 to that Act or, where at such time the lease was**] a lease contemplated in paragraph (b) of the definition of ‘instalment credit agreement’ in section 1 of the Value-added Tax Act, 1991 (Act No. 89 of 1991), the cash value thereof as contemplated in the definition of ‘cash value’ in the said section[, **but excluding the tax referred to therein**]; or”;

- (c) by the deletion of the proviso to subparagraph (2);

- (d) by the substitution in subparagraph (4) for the words preceding item (a) of the following words:

“Subject to [**the provisions of subparagraphs (9) and (10)**] subparagraph (10), the value to be placed on the private use of such vehicle shall be determined for each month or part of a month during which the employee was entitled to use the vehicle for private purposes (including travelling between the employee’s place of residence and his or her place of employment) and the said value shall—”;

- (e) by the substitution in subparagraph (4)(a) for the words preceding the proviso of the following words:

“as respects each such month, be an amount equal to [**2,5**] 4 per cent of the determined value of such motor vehicle; and”;

- (f) by the deletion in subparagraph (4) of the proviso and the further proviso to item (a);

- (g) by the substitution for subparagraph (5) of the following subparagraph:

“(5) [**Subject to the provisions of subparagraph (7)**] For the purposes of subparagraph 4(b), no reduction in the value determined under subparagraph (4) shall be made by reason of the fact that the vehicle in question was during any period for any reason temporarily not used by the employee for private purposes.”;

- (h) by the substitution for subparagraph (7) of the following subparagraph:

“(7) Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for business purposes in such vehicle are kept, the Commissioner must upon the assessment of the employee’s liability for normal tax for the year of

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assessment reduce the value placed on the private use of the vehicle calculated under subparagraph (4) by an amount that bears to that calculated value the same ratio as the number of kilometres travelled for business purposes bears to the total amount of kilometres travelled in such vehicle during that year of assessment.”;

(i) by the substitution of subparagraph (8) of the following subparagraph:

“(8) Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for private purposes in such vehicle are kept and the employee is required by his or her employer to bear—

(a) (i) the full cost of the licence for such vehicle the Commissioner must upon the assessment of the employee’s liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the licence for such vehicle the same ratio as the number of kilometres travelled for private use bears to the total number of kilometres travelled in such vehicle during that year of assessment; or

(ii) the full cost of the insurance of such vehicle the Commissioner must upon the assessment of the employee’s liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the insurance for such vehicle the same ratio as the number of kilometres travelled for private use bears to the total number of kilometres travelled in such vehicle during that year of assessment;

(iii) the full cost of the maintenance of such vehicle the Commissioner must upon the assessment of the employee’s liability for normal tax for the year of assessment reduce the value placed on the private use of such vehicle calculated under subparagraph (4) by an amount that bears to the amount of the cost of the maintenance for such vehicle the same ratio as the number of kilometres travelled for private use bears to the total number of kilometres travelled in such vehicle during that year of assessment;

(b) the cost of fuel for private purposes for such vehicle, the Commissioner must upon the assessment of the employee’s liability for normal tax for the year of assessment reduce the value placed on the private use of the vehicle during that year of assessment calculated under subparagraph (4) with an amount determined for the total kilometres travelled for private purposes by applying the rate per

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kilometre fixed by the Minister in the *Gazette* for the purposes of section 8(1)(b)(ii) and (iii) of the Act.”; and

(j) by the substitution for subparagraph (9) of the following subparagraph:

“(9) If the employer reimburses the employee for any of the expenses borne for use of the vehicle by the employee as contemplated in subparagraph (7) or (8), any amount deductible under those subparagraphs for that year of assessment must be reduced by the amount of that reimbursement.”.

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 13 of Seventh Schedule to Act 58 of 1962, as amended by section 51 of Act 129 of 1991, section 37 of Act 30 of 2002 and section 61 of Act 31 of 2005

88. (1) Paragraph 13 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) No value shall be placed under this paragraph on the value of any taxable benefit derived by reason of the fact that an employer has paid—

(b) **[has paid]** subscriptions due by his or her employee to a professional body, if—

(i) membership of such body is a condition [of the employee’s employment] for practising the profession to which the professional body relates; and

(ii) the services rendered by the employee to the employer relate to that profession;

(bA) insurance premiums indemnifying an employee against claims arising from negligent acts or omissions on the part of the employee in rendering services to the employer; or

(c) **[has paid]** any portion of the value of a benefit which is payable by a former member of a non-statutory force or service as defined in the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), to the Government Employees’ Pension Fund as contemplated in Rule 10 (6) (d) or (e) of the Rules of the Government Employees Pension Fund contained in Schedule 1 to that Proclamation.”.

(2) Subsection (1) comes into operation on 1 March 2011 and applies in respect of employees’ years of assessment commencing on or after that date.

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Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 25 of Act 19 of 2001, section 66 of Act 60 of 2001, section 64 of Act 74 of 2002, section 91 of Act 45 of 2003, section 52 of Act 32 of 2004 and section 64 of Act 31 of 2005

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

“(b) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20 per cent of the equity [**share capital of**] shares in that company or ownership or right to ownership of that other entity.”.

(2) Subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

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, section 52 of Act 3 of 2008 and section 77 of Act 60 of 2008

90. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

- “(a) (i) is or was allowable or is deemed to have been allowed as a deduction in determining the taxable income of that person [**before the inclusion of any taxable capital gain**]; and
- (ii) is not included in the taxable income of that person in terms of section 9C(5),
before the inclusion of any taxable capital gain; or”.

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, amended by section 81 of Act 60 of 2001, section 38 of Act 30 of 2002, section 76 of Act 74 of 2002, section 47 of Act 20 of 2006 and section 61 of Act 8 of 2007

91. (1) Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

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“(3) For the purposes of this paragraph, ‘**controlling interest**’ in a company [,] means an interest in more than 35 per cent of the equity [**share capital of**] shares in that company.”.

(2) Subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001, section 81 of Act 74 of 2002, section 63 of Act 32 of 2004 and section 72 of Act 31 of 2005

92. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (2) of item (d).

Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962, as amended by section 90 of Act 60 of 2001, section 74 of Act 31 of 2005, section 74 of Act 35 of 2007 and section 55 of Act 3 of 2008

93. Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (c) of the following item:

“(c) has otherwise diminished risk of loss in respect of that [**share**] financial instrument by holding one or more contrary positions with respect to a financial instrument of the same kind and of the same or equivalent quality.”.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002 section 101 of Act 45 of 2003, section 75 of Act 31 of 2005 and section 51 of Act 33 of 2006 and section 76 of Act 35 of 2007

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

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

“Where a person disposes of an asset, (other than an asset contemplated in subparagraph (1) or (4)), for proceeds which are [**either**] received or accrued [**or denominated for purposes of financial reporting of a permanent establishment of that person**] in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset which is [**either**] actually incurred [**or so denominated**] in another currency (hereinafter referred to as the

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‘currency of expenditure’), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—”; and

(b) by the substitution in subparagraph (7) for paragraph (a) of the definition of “local currency” of the following paragraph:

“(a) in relation to a permanent establishment of a person, the functional currency **[used by]** of that permanent establishment **[for purposes of financial reporting]** (other than the currency of any country in the common monetary area);”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

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

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

“43B. For the purposes of determining the base cost of an asset attributable to a permanent establishment—
(a) outside the Republic of a person who is a resident; or
(b) of a controlled foreign company,
where the functional currency of the permanent establishment is the currency of a country which—
(i) abandoned its currency; and
(ii) had an official rate of inflation of 100 per cent or more throughout the foreign tax year preceding the abandonment of the currency,
the person or controlled foreign company must be deemed to have acquired the asset for an amount equal to the market value of the asset at the beginning of the foreign tax year in which a new functional currency was adopted by the permanent establishment.”.

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of assets held on or after 1 January 2009.

Amendment of paragraph 45 of Eighth Schedule to Act 58 of 1962, as substituted by section 93 of Act 60 of 2001 and amended by section 33 of Act 9 of 2006, section 2 of Act 8 of 2007 and section 73 of Act 17 of 2009

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

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

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

Amendment of paragraph 51 of Eighth Schedule to Act 58 of 1962, as substituted by section 74 of Act 17 of 2009

97. (1) Paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for items (c) and (d) of the following items:

“(c) except in the case of an interest held as trading stock, no allowance or deduction allowed to that company or trust in respect of that interest must be recovered or recouped by that company or trust or be included in the income of that company or trust in the year in which the transfer takes place; and

(d) that company or trust and that natural person must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction [—

(i) **to which that company or trust may be entitled in respect of that interest; or**

(ii)] that is to be recovered or recouped by or included in the income of that **[company or trust]** natural person in respect of that interest.”; and

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

“(a) that natural person acquires that interest from the company or trust no later than **[31 December 2011]** 30 September 2010.”; and

“(d) the registration contemplated in item (b)(i) takes place not later than **[31 December 2011]** 30 September 2010”.

(2) Subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of transfers made on or after that date and before 1 October 2010.

Insertion of paragraph 51A in Eighth Schedule to Act 58 of 1962

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

“Disposal of residence by a company or trust and liquidation, winding up, deregistration or revocation of company or trust

51A. (1) This paragraph applies where an interest in a residence has been acquired by a natural person as a result of a disposal by a company or a trust of that interest to that natural person and—

(a) the natural person acquires that interest from the company or trust no later than 31 December 2012;

(b) the natural person alone or together with his or her spouse—

(i) directly held all the shares or members’ interest in that company from 11 February 2009 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or

(ii) disposed of that residence to that trust by way of donation, settlement or other disposition or financed all the expenditure, as contemplated in paragraph 20, actually incurred by the trust to acquire and to improve the residence;

(c) the natural person alone or together with his or her—

(i) spouse or spouses;

(ii) spouse or spouses and relative or relatives; or

(iii) relative or relatives,

used that interest in that residence mainly for domestic purposes from 11 February 2009 to the date of the registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly;

(d) the registration contemplated in item (c) takes place not later than 31 December 2012;

(e) within a period of 18 months after the date of registration contemplated in item (c) or such further period as the Commissioner may allow—

(i) that company has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister;

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- (ii) the beneficiaries of that trust have made application to a competent court for the revocation of the trust in terms of section 2 of the Immovable Property (Removal or Modification of Restrictions) Act, 1965 (Act No.94 of 1965); or
- (iii) the founder, the trustees and the beneficiaries of that trust have—

 - (aa) agreed in writing to the revocation of the trust; or
 - (bb) made application to a competent court for the revocation of the trust in terms of section 13(2) of the Trust Property Control Act, 1988 (Act No. 57 of 1988); and
- (f) 90 per cent or more of the market value of the assets held by the company or trust was attributable to the interest throughout the period—

 - (i) commencing on the date of acquisition by the company of the residence; or
 - (ii) commencing on the date of disposal of the residence to the trust, and ending on the date of registration contemplated in item (c).

(2) Where an interest in a residence has been acquired by a natural person as a result of a disposal by a company or a trust of that interest to that natural person as contemplated in subparagraph (1), that company or trust must be deemed to have disposed of that interest for an amount equal to the base cost of that interest on the date of disposal thereof.

(3) Where an interest in a residence has been acquired by a natural person as a result of a disposal by a company of that interest to that natural person as contemplated in subparagraph (1) and the natural person or the natural person together with his or her spouse acquired all the shares or member's interest in that company subsequent to the date of acquisition by the company of the interest—

- (a) that natural person must be deemed to have acquired that interest at a cost equal to the market value of the interest of the residence on the date of the acquisition by the natural person or the natural person together with his or her spouse of the shares or member's interest plus the cost of any improvements effected to the residence subsequent to that date of acquisition; and
- (b) that natural person must disregard the disposal of any equity share in that company for purposes of determining his or her taxable income, assessed loss, aggregate capital gain or aggregate capital loss if that disposal is made in anticipation of or in the course of the liquidation, winding up or deregistration of that company.

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(4) Where an interest in a residence has been acquired by a natural person as a result of a disposal by a company of that interest to that natural person as contemplated in subparagraph (1) and the natural person or the natural person together with his or her spouse did not acquire all the shares or member's interest in that company subsequent to the date of acquisition by the company of the interest—

- (a) the natural person must, for purposes of determining any capital gain or capital loss in respect of the disposal of the interest, be deemed to be one and the same person with respect to the date of acquisition of that interest by that company and the amount and date of incurral by that company of any expenditure in respect of that interest allowable in terms of paragraph 20; and
- (b) the natural person must disregard the disposal of any share in that company for purposes of determining his or her taxable income, assessed loss, aggregate capital gain or aggregate capital loss if that disposal is made in anticipation of or in the course of the liquidation, winding up or deregistration of that company.

(5) Where an interest in a residence has been acquired by a natural person as a result of a disposal by a trust of that interest to that natural person as contemplated in subparagraph (1), that natural person and that trust must for purposes of determining any capital gain or capital loss in respect of the disposal by that natural person of that interest so acquired, be deemed to be one and the same person with respect to—

- (a) the date of acquisition of that interest by that trust;
- (b) the amount and date of incurral by that trust of any expenditure in respect of that interest allowable in terms of paragraph 20; and
- (c) any valuation of that interest effected by that trust as contemplated in paragraph 29(4).”.

(2) Subsection (1) comes into operation on 1 October 2010 and applies in respect of disposals made on or after that date and before 1 January 2013.

Amendment of paragraph 62 of the Eighth Schedule to Act 58 of 1962, as substituted by section 103 of Act 45 of 2003 and amended by section 52 of Act 20 of 2006

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

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

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“(a) the **[Government or any provincial administration]** government of the Republic
in the national, provincial or local sphere, as contemplated in section 10(1)(a);”;

and

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

“(d) a person referred to in section **[10(1)(b), (cE) or (e)]** 10(1)(cE) or (e); or”.

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, section 58 of Act 3 of 2008 and section 81 of Act 60 of 2008

100. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“**Disposal of [interest in] equity [share capital of] shares in foreign [company] companies**”;

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

“ ‘**foreign company**’ means—

(a) a foreign company as defined in section 9D; or

(b) a headquarter company;”;

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

“Subject to subparagraph (5), a person must disregard any capital gain or capital loss determined in respect of the disposal of any **[interest in the] equity share [capital of] in** any foreign company (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2 (2)), if—”;

(d) by the substitution in subparagraph (2)(a) for subitem (i) of the following subitem:

“(i) held at least 20 per cent of the equity **[share capital] shares** and voting rights in that foreign company; and”;

(e) by the substitution in subparagraph (2) for the proviso to item (a) of the following proviso:

“: Provided that in determining the total equity **[share capital] shares** in a foreign company, there shall not be taken into account any share which would have

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constituted a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section”;

- (f) by the substitution in subparagraph (2) for the proviso to item (a) of the following proviso:

“: Provided that in determining the total equity shares in a foreign company, there must not be taken into account any share if—

(i) that company is obliged to redeem that share in whole or in part;

(ii) that share may at the option of the holder of the share be redeemed in whole or in part;

(iii) the holder of that share has any right to require any person to—

(A) procure, facilitate or assist with—

(AA) the redemption in whole or in part of that share;

(BB) the repayment in whole or in part of the amount subscribed for that share; or

(CC) the conversion of that share into any other share which is redeemable in whole or in part; or

(B) acquire that share in whole or in part from that holder;

(iv) any person is under any obligation to acquire that share in whole or in part from the holder; or

(v) that share is subject to any condition that places any obligation, whether direct or indirect, to acquire that share in whole or in part from the holder of that share”;

- (g) by the substitution in subparagraph (3) for the words preceding item (a) of the following words:

“Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any **[interest in the]** equity share **[capital of]** in any foreign company by a person which is or was disregarded in terms of subparagraphs (2) and (5) in any year of assessment, if— ”;

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

“(b) the **[interest in the]** equity share **[capital of]** in that foreign company was disposed of to a connected person in relation to that person either before or after that disposal;”;

- (i) by the substitution in subparagraph (3)(c) for subitem (i) of the following subitem:

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- “(i) disposed of that equity share [**capital**] for no consideration or for consideration which does not reflect an arm’s length price, other than a distribution contemplated in subitem (ii);”;
- (j) by the substitution in subparagraph (3)(c)(ii) for the words preceding subsubitem (aa) of the following words:
- “disposed of that equity share [**capital**] by means of a distribution unless the full amount of that distribution—”;
- (k) by the substitution in subparagraph (3)(c)(iii) for the words preceding subsubitem (aa) of the following words:
- “disposed of any consideration received or accrued from the disposal of that equity share [**capital**] (or any amount received in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share [**capital**] forms part—”;
- (l) by the substitution in subparagraph (4) for the words following item (b) of the following words:
- “and the company to which that distribution was made, disposes of any amount of that distribution in the circumstances contemplated in subparagraph (3)(c)(i), (ii) or (iii), that company must be treated as having disposed of the [**interest in the**] equity share [**capital of**] in that foreign company by means of a disposal which is or was disregarded in terms of subparagraph (2).”;
- (m) 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**] shares and voting rights in that company”;
- (n) by the substitution in paragraph (5) for paragraph (a) of the proviso of the following paragraph:
- “(a) in determining the total equity [**share capital of**] shares in a company, there shall not be taken into account any share which would have constituted a hybrid

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equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and”;

(o) by the substitution for the proviso to subparagraph (5) of the following proviso:

“: Provided that—

(a) in determining the total equity shares in a company, there must not be taken into account any share if—

(i) that company is obliged to redeem that share in whole or in part;

(ii) that share may at the option of the holder of the share be redeemed in whole or in part;

(iii) the holder of that share has any right to require any person to—

(A) procure, facilitate or assist with—

(AA) the redemption in whole or in part of that share

(BB) the repayment in whole or in part of the amount subscribed for that share; or

(CC) the conversion of that share into any other share which is redeemable in whole or in part; or

(B) acquire that share in whole or in part from that holder;

(iv) any person is under any obligation to acquire that share in whole or in part from the holder; or

(v) that share is subject to any condition that places any obligation, whether direct or indirect, to acquire that share in whole or in part from the holder of that share; and

(b) this exemption must not apply in respect of any capital distribution received by or accrued to any person if the amount of that capital distribution or part thereof is determined directly or indirectly with reference to any amount paid by that person to any other person and the amount paid to that other person is—

(i) exempt from normal tax in the hands of that other person; or

(ii) disregarded in determining the liability for normal tax of that other person”; and

(p) by the substitution in subparagraph (6) for item (a) of the following item:

“(a) the disposal of any **[interest in the]** equity share **[capital of]** in any portfolio contemplated in paragraph (e) of the definition of ‘company’ in section 1; and”.

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(2) Paragraphs (a), (b), (d), (e), (g), (h), (i), (j), (k), (l), (m), (n) and (p) of subsection (1) come into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Paragraph (c) of subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraphs (f) and (o) of subsection (1) come into operation on 1 January 2011, and apply in respect of capital distributions received or accrued during years of assessment commencing on or after that date.

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

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

(a) by the substitution in the definition of “share” for paragraph (a) of the following paragraph:

“(a) any share [**capital of**], or member’s interest, in [,] that company and any right or interest in or to such share [**capital**] or member’s interest, whether or not that share [**capital**] or member’s interest carries a right to participate in dividends or a capital distribution; or”; and

(b) by the deletion in the definition of “share” of paragraph (b).

(2) Subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of paragraph 96 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002 and amended by section 123 of Act 45 of 2003

102. (1) Paragraph 96 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of paragraphs 11(2)(a)[, (e)] and (i), 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80, 82 and 83 of [**the Eighth**] this Schedule [**to the Act,**] shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.”.

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

Amendment of paragraph 4 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006

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

(a) by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

“(1) Currency gains or losses of an oil and gas company during any year of assessment (regardless of whether those gains or losses are realised or unrealised) must be determined solely with reference to—

(a) the functional currency of that company; and

(b) the **[currency and]** translation method used by that company for purposes of financial reporting.

(2) Any amount received by or accrued to, or expenditure incurred by, an oil and gas company during any year of assessment in any currency other than that of the Republic must be—

(a) determined in the functional currency of that company; and

(b) translated to the currency of the Republic [in accordance with the translation method used by that oil and gas company for purposes of financial reporting for the relevant year of assessment. and any tax in respect of that year must be translated to the currency of the Republic] by applying the average exchange rate for that year.”; and

(b) by the deletion of subparagraph (3).

(2) Subsection (1) comes into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 6 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 74 of Act 8 of 2007

104. (1) Paragraph 6 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (b) of the following item:

“(b) all interest bearing loans, debts and advances contemplated in item (a) in the aggregate exceed an amount equal to three times the **[total fixed capital (being share capital,**

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share premium and accumulated net realised and unrealised profits) of] market value of all the shares in that company.”.

(2) Subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No. 71 of 2008), comes into operation.

Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001, section 53 of Act 30 of 2002, section 41 of Act 12 of 2003, section 155 of Act 45 of 2003, section 36 of Act 16 of 2004, section 14 of Act 9 of 2005, section 36 of Act 9 of 2006, section 76 of Act 8 of 2007, section 66 of Act 3 of 2008 and section 88 of Act 17 of 2009

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

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

(3) Subject to section 58(1) of the Customs and Excise Act, 1964, subsection (1) is deemed to have come into operation on 17 February 2010.

Continuation of certain amendments of Schedules to Act 91 of 1964

106. Every amendment or withdrawal of or insertion in Schedule No. 1 to 6, 8 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 August 2009 up to and including 31 July 2010, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

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,

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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, section 68 of Act 3 of 2008 and section 104 of Act 60 of 2008

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

(a) by the substitution in the definition of “exported” for paragraph (b) of the following paragraph:

“(b) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (a) or (c) of the definition of ‘foreign-going ship’ or to a foreign-going aircraft when such ship or aircraft is going to a destination in an export country and such goods are for use or consumption in such ship or aircraft, as the case may be; or”;

(b) by the substitution for the definition of “foreign-going aircraft” of the following definition:

“ **‘foreign-going aircraft’** means any—

(a) aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in the Republic and airports in export countries or between airports in export countries; or

(b) foreign military aircraft;” and

(c) by the deletion in the definition of “foreign-going ship” of the word “or” at the end of paragraph (a);

(d) by the addition in the definition of “foreign-going ship” of the word “or” at the end of paragraph (b);

(e) by the addition to the definition of “foreign-going ship” of the following paragraph:

“(c) any foreign naval ship;”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Insertion of section 8A in Act 89 of 1991

108. The Value-Added Tax Act, 1991, is hereby amended by the insertion of the following section:

“**Shari’a compliant financing arrangements**

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8A. (1) For the purposes of this Act, in the case of any Murabaha arrangement as defined in section 24JA(1) of the Income Tax Act—

- (a) notwithstanding the provisions of section 54, the bank offering the Murabaha arrangement is deemed to be an agent and not a principal for the purposes of the arrangement;
- (b) notwithstanding the provisions of section 54, the client is deemed to be the principal for the purposes of the supply by the seller, and is deemed to acquire the goods for an amount equal to the consideration payable by the bank to the seller and at the time that the supply was made by the seller; and
- (c) any premium payable to the bank by the client is deemed to be consideration in respect of an exempt financial service supplied by the bank: Provided that this paragraph shall not apply the extent to which the consideration payable is any fee, commission, or similar charge.

(2) For the purposes of this Act, in the case of any Diminishing Musharaka arrangement as defined in section 24JA(1) of the Income Tax Act—

- (a) notwithstanding the provisions of section 54, the bank offering the Diminishing Musharaka arrangement is deemed to be an agent and not a principal for the purposes of the arrangement;
- (b) notwithstanding the provisions of section 54, the client is deemed to be the principal for the purposes of the supply, and is deemed to acquire the bank's proportionate share for an amount equal to the consideration payable by the bank to the seller and at the time that the supply was made by the seller; and
- (c) any rent payable to the bank by the client is deemed to be consideration in respect of an exempt financial service supplied by the bank: Provided that this paragraph shall not apply the extent to which the consideration payable is any fee, commission, or similar charge.

(3) For the purposes of this section, the terms 'Murabaha', 'Diminishing Musharaka', 'seller', 'bank' and 'client' have the meanings ascribed to those terms in section 24JA of the Income Tax Act."

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 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

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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, section 82 of Act 8 of 2007 and section 107 of Act 60 of 2008

109. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended—

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

“: Provided that where the provisions of paragraph (ii)(dd) of the proviso to section 22(3)(b) are applicable, the consideration in money, under this subsection, shall be reduced by that portion of the consideration which has not been paid as contemplated in section 22(3)”; and

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

“(5A) Where goods or services are deemed to be supplied by a vendor in terms of section 8(2) and where 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) reduced by R100 000: Provided that where the consideration as determined in subsection (5) is less than R100 000, the consideration in money, for the purposes of this section shall be deemed to be nil;”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

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

110. Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (4) of the proviso to symbol “B”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996, section 36 of Act 27 of 1997, section 95 of Act 30 of 1998, section 177 of Act 45 of 2003, section 110 of Act 31 of 2005 and section 86 of Act 20 of 2006

111. (1) Section 22 of the Value-Added Tax Act, 1991, is hereby amended—

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

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- “**[Where]** Subject to subsection (5) where a vendor—”;
- (b) by the deletion in subsection (3)(b) of the word “or” after paragraph (ii)(cc) of the proviso;
- (c) by the addition in subsection (3)(b) of the expression “; or” after paragraph (ii)(dd) of the proviso;
- (d) by the addition in subsection (3)(b) to paragraph (ii) of the proviso of the following subparagraph:
- “(ee) the recipient vendor entered into an agreement with any supplier vendor whereby any debt of that vendor is written off in terms of subsection (5),”;
- (e) by the addition in subsection (3)(b) to paragraph (ii) of the proviso of the following item:
- “(CC) at the time the agreement in writing referred to in subsection (5) is entered into by the supplier vendor and the recipient vendor; or”;
- (f) by the substitution in subsection (3)(b) for paragraph (iii) of the proviso for the following paragraph:
- “(iii) [subparagraph] paragraph (ii) shall not be applicable where a vendor has already accounted for tax payable in accordance with this subsection[.]; and”;
- (g) by the addition to subsection (3) of the following paragraph:
- “(c) this subsection shall not be applicable where the vendor is a member of a group of companies as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008).”; and
- (h) by the addition of the following subsection:
- “(5) Where the supplier vendor is a member of a group of companies as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), the supplier vendor may make a deduction of an amount of tax that has become irrecoverable contemplated in subsection (1) only where the supplier vendor and the recipient vendor agree in writing that such debt is irrecoverable and that such debt shall be written off.”.
- (2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008 and section 93 of 17 of 2009

112. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (8).

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(2) Subsection (1) comes into operation on the date of the promulgation of this Act.

Amendment of Schedule 1 to Act 20 of 2006, as amended by section 111 of Act 8 of 2007, section 70 of Act 3 of 2008 and section 124 of Act 60 of 2008

113. (1) Schedule 1 to the Revenue Laws Amendment Act, 2006, is hereby amended by the insertion of the following paragraph:

“Secondary tax on companies treatment of dividends

7A. There shall be exempt from the secondary tax on companies so much of any dividend declared in the course or in anticipation of the liquidation, deregistration or final termination of the corporate existence of a company which was incorporated in the Republic with the sole purpose of carrying out the obligations of its shareholder in term of an agreement with FIFA as a FIFA Designated Service Provider or a Hospitality Service Provider, as is shown by the company to be from any receipt or accrual that was excluded from ‘gross income’ as defined in the Income Tax Act, 1962, by paragraph 7.”

(2) Subsection (1) comes into operation on 1 July 2010 and applies in respect of dividends declared on or after that date.

Amendment of section 125 of Act 35 of 2007, as substituted by section 76 of Act 3 of 2008 and amended by section 132 of Act 60 of 2008

114. (1) Section 125 of the Revenue Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (10) of the following subsection:

“(10) Subsections (1) to (9) come into operation on 1 January 2008 and shall apply to any **[disposal] transaction concluded** on or before 31 December **[2009] 2012**.”

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

Amendment of section 1 of Act 28 of 2008

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

(a) by the addition in the definition of “transfer” of the word “or” at the end of paragraph (a);

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- (b) by the deletion in the definition of “transfer” of paragraph (b);
- (c) by the substitution in the definition of “transfer” for the words following paragraph (c) of the following words:

“if that mineral resource has not previously been disposed of, **[exported,]** consumed, stolen, destroyed or lost;” and

- (d) by the insertion after the definition of “unrefined mineral resource” of the following definition:

“‘wins or recovers’ means every method or process by which a mineral resource is won or recovered from the soil or from any substance or constituent thereof.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of mineral resources transferred on or after that date.

Amendment of section 2 of Act 28 of 2008

116. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for section 2 of the following section:

“Imposition of royalty

2. A person that wins or recovers a mineral resource originating from within the Republic must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of that mineral resource.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of mineral resources transferred on or after that date.

Amendment of section 5 of Act 28 of 2008, as amended by section 98 of Act 17 of 2009

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

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

“less any amount which in terms of that Act—

- (i) is allowed to be deducted from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and

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develop those refined mineral resources to the condition specified in Schedule 1 for those mineral resources; or

(ii) would have been allowed to be deducted from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those refined mineral resources had those mineral resources been developed to the condition specified in Schedule 1 for those mineral resources.”; and

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

“less any amount which in terms of that Act—

(i) is allowed to be deducted from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources to the condition specified in Schedule 2 for those mineral resources; or

(ii) would have been allowed to be deducted from the income of the extractor during any year of assessment in respect of assets used or expenditure incurred to win, recover and develop those unrefined mineral resources had those mineral resources been developed to the condition specified in Schedule 2 for those mineral resources.”.

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

Insertion of section 6A in Act 28 of 2008

118. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the insertion of the following section:

“Application of Schedule 2

6A. (1) If any unrefined mineral resource—

(a) is not brought to any condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the least refined condition specified for that mineral resource; and

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(b) is refined beyond any specified condition in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the most refined condition specified in Schedule 2 for that mineral resource.

(2) If the concentrate of a mineral resource listed in Schedule 2 contains any metals or minerals other than that mineral resource, those other metals and minerals must, for the purposes of this Act, be treated as being one and the same mineral resource as that mineral resource listed in Schedule 2.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies to a mineral resource transferred on or after that date.

Insertion of section 8A in Act 28 of 2008

119. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the insertion of the following section:

“Exemption for domestic refining

8A. (1) An extractor that transfers a mineral resource to another extractor is exempt from the royalty in respect of the transfer of that mineral resource if—

(a) both extractors on the date of the transfer are extractors that are registered in terms of section 2(3) of the Administration Act;

(b) the mineral resource is transferred to another extractor for the purpose of that extractor refining that mineral resource in the Republic; and

(c) both extractors agree in writing that this section applies to that transfer.

(2) An extractor to whom a mineral resource is transferred under subsection (1) is deemed to be the person that wins or recovers the mineral resource.

(3) This section does not apply to any transfer of that mineral resource subsequent to the transfer under subsection (1).”

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

Amendment of Schedule 1 to Act 28 of 2008

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

(a) by the insertion in the “Mineral resource name” column after “Copper” of the following word:

“Ferrochrome”;

(b) by the insertion in the “Refined condition” column after “Copper is refined once processed into copper metal slabs, blister copper or cathode copper of at least 99,0% purity.” and corresponding to “Ferrochrome” of the following words:

“High carbon ferrochrome with 47% Cr content or charge chrome with 50% Cr content”;

(c) by the insertion in the “Mineral resource name” column after “Talc” of the following word:

“Vanadium”; and

(d) by the insertion in the “Refined condition” column after “98.5% and minus 325 μ m mesh” and corresponding to “Vanadium” of the following words:

“Vanadium as chemically extracted and refined to a minimum purity of 10% V₂O₅ equivalent and above”.

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

Amendment of Schedule 2 to Act 28 of 2008, as amended by section 103 of Act 17 of 2009

121. (1) Schedule 2 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for the words in the “Unrefined condition” column corresponding to “Vanadium” of the following words:

“Concentrate < 10% V₂O₅ equivalent and less than 2% calcium and silica bearing gangue minerals (SiO₂ + CaO)”.

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

Amendment of section 47 of Act 60 of 2008

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122. (1) Section 47 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on the date on which **[Part VIII of Chapter II of the Income Tax Act, 1962,]** the Companies Act, 2008 (Act No.71 of 2008), comes into operation.”.

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

Amendment of section 50 of Act 60 of 2008

123. (1) Section 50 of the Revenue Laws Amendment Act, 2008 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1)(a) comes into operation on the date on which **[Part VIII of Chapter II of the Income Tax Act, 1962,]** the Companies Act, 2008 (Act No.71 of 2008), comes into operation.”.

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

Amendment of section 52 of Act 60 of 2008

124. (1) Section 52 of the Revenue Laws Amendment Act, 2008 is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Subsection (1)(b) comes into operation on the date on which **[Part VIII of Chapter II of the Income Tax Act, 1962,]** the Companies Act, 2008 (Act No.71 of 2008), comes into operation.”.

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

Amendment of section 85 of Act 60 of 2008

125. (1) Section 85 of the Revenue Laws Amendment Act, 2008 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Paragraph (a) of subsection (1) comes into operation on the date on which **[Part VIII of Chapter II of the Income Tax Act, 1962,]** the Companies Act, 2008 (Act No.71 of 2008), comes into operation.”.

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

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Amendment of section 3 of Act 17 of 2009

126. (1) Section 3 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of [**distributions made**] acquisitions taking place on or after that date and before [1 January 2012] 1 October 2010.”.

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

Amendment of section 7 of Act 17 of 2009

127. (1) Section 7 of the Taxation Laws Amendment Act, 2009, is hereby amended—

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

“(gA) by the insertion in the definition of ‘dividend’ of the following paragraph:

“ ‘(k) any amount that constitutes an acquisition by a company of its own securities as contemplated in paragraph 5.67 of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with the requirements prescribed by paragraphs 5.67 to 5.84 of section 5 of the JSE Limited Listings Requirements.’ ”;

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

“(3) Paragraphs (g)[,] and (h) [and (l)] of subsection (1) come into operation on the date on which [**Part VIII of Chapter II of the Income Tax Act, 1962,**] the Companies Act, 2008 (Act No.71 of 2008), comes into operation.”; and

(c) by the insertion of the following subsection:

“(6) Paragraph (l) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Companies Act, 2008 (Act No.71 of 2008), comes into operation.

(4) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 October 2009.

Amendment of section 51 of Act 17 of 2009

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128. (1) Section 51 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) to the extent that it inserts paragraph (k) into section 64B(5) is deemed to have come into operation on 11 February 2009 and applies to distributions made on or after that date and before **[1 January 2012]** 1 October 2010.”.

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

Amendment of section 53 of Act 17 of 2009

129. (1) Section 53 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*, which date must be at least three months after the date of the notice, and applies in respect of any dividend declared and paid 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 54 of Act 17 of 2009

130. (1) Section 54 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation, and applies in respect of any value extraction effected 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 59 of Act 17 of 2009

131. (1) Section 59 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (3) of the following subsection:

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

(a) accrue on or after that date; and

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(b) are not paid to a beneficiary fund as defined in section 1 of the **[Income Tax Act, 1962]** Pension Funds Act, 1956 (Act No. 24 of 1956), on or after 1 March 2009 and before 1 September 2009.”.

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

Amendment of section 60 of Act 17 of 2009

132. (1) Section 60 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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

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

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

Amendment of section 69 of Act 17 of 2009

133. Section 69 of the Taxation Laws Amendment Act, 2009, is hereby amended—

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

“(bA) by the deletion in subparagraph (3)(b) of the word ‘and’ at the end of item (ii);

(bB) by the addition in subparagraph (3)(b) of the word ‘and’ at the end of item (iii);

and

(bC) by the addition to subparagraph (3)(b) of the following item:

‘(iv) any dividend comprising a capital distribution as defined in paragraph 74;

and’ ”; and

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

“(2) **[Subsection (1)]** Paragraphs (a), (b), (c) and (d) of subsection (1), except insofar as **[it inserts]** they insert the words ‘or as part of’, **[comes]** come into operation on the

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date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(3) Paragraphs (bA), (bB) and (bC) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.”.

Amendment of section 74 of Act 17 of 2009

134. (1) Section 74 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of transfers made on or after that date and before [**1 January 2012**] 1 October 2010.”.

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

Amendment of section 78 of Act 17 of 2009

135. (1) Section 78 of the Taxation Laws Amendment Act, 2009, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on the date on which [**Part VIII of Chapter II of the Income Tax Act, 1962,**] the Companies Act, 2008 (Act No.71 of 2008), comes into operation.”.

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

Amendment of Appendix I of Act 17 of 2009

136. Appendix I of the Taxation Laws Amendment Act, 2009, is hereby amended—

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

“**5.** The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, in respect of any year of assessment commencing [**on or after 1 April 2008 and**] before 1 March 2009 and ending during the period of 12 months ending on 31 March 2010 is 33 per cent.”; and

(b) by the substitution for paragraph 6 of the following paragraph:

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

Short title and commencement

137. (1) This Act is called the Taxation Laws Amendment Act, 2010.

(2) Except insofar as otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2011.

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Appendix I

(Section 5)

RATES OF NORMAL TAX AND REBATES

1. The rate of tax referred to in section 5(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit) of any natural person, deceased estate, insolvent estate or special trust (other than a public benefit organisation or recreational club referred to in paragraph 5) in respect of any year of assessment commencing on 1 March 2010 is set out in the table below:

Taxable income	Rate of tax
Not exceeding R140 000	18 per cent of taxable income
Exceeding R140 000 but not exceeding R221 000	R25 200 plus 25 per cent of amount by which taxable income exceeds R140 000
Exceeding R221 000 but not exceeding R305 000	R45 450 plus 30 per cent of amount by which taxable income exceeds R221 000
Exceeding R305 000 but not exceeding R431 000	R70 650 plus 35 per cent of amount by which taxable income exceeds R305 000
Exceeding R431 000 but not exceeding R552 000	R114 750 plus 38 per cent of amount by which taxable income exceeds R431 000
Exceeds R552 000	R160 730 plus 40 per cent of amount by which taxable income exceeds R552 000

2.

Description	Reference to Income Tax Act, 1962	Amount
Primary rebate	Section 6(2)(a)	R10 260
Secondary rebate	Section 6(2)(b)	R5 675

3. The rate of tax referred to in section 5(1) of this Act to be levied in respect of the taxable income of a trust (other than a special trust or a public benefit organisation referred to in paragraph 5) in respect of any year of assessment ending on 28 February 2011 is 40 per cent.

4. The rate of tax referred to in section 5(1) of this Act to be levied in respect of the taxable income of a company (other than a public benefit organisation or recreational club referred to in paragraph 5 or a small business corporation referred to in paragraph 6) in respect of any year of assessment ending during the period of 12 months ending on 31 March 2011 is, subject to the provisions of paragraph 11, as follows:

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

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loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

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

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

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

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

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

5. The rate of tax referred to in section 5(1) of this Act to be levied in respect of the taxable income of any public benefit organisation that has been approved by the Commissioner for the South African Revenue Service in terms of section 30(3) of the Income Tax Act, 1962, or any recreational club that has been approved by the Commissioner for the South African Revenue Service in terms of section 30A(2) of that Act is 28 per cent—

- (a) in the case of an organisation or club that is a company, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2011; or
- (b) in the case of an organisation that is a trust, in respect of any year of assessment ending on 28 February 2011.

6. The rate of tax referred to in section 5(1) of this Act to be levied in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, in respect of any year of assessment ending during

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the period of 12 months ending on 31 March 2011 is, subject to the provisions of paragraph 11, set out in the table below:

Taxable income	Rate of tax
Not exceeding R57 000	0 per cent of taxable income
Exceeding R57 000 but not exceeding R300 000	10 per cent of amount by which taxable income exceeds R57 000
Exceeding R300 000	R24 300 plus 28 per cent of amount by which taxable income exceeds R300 000

7. The rate of tax referred to in section 5(2) of this Act to be levied in respect of the taxable turnover of a person that is a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2011 is set out in the table below:

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

8.(a)(i) If a retirement fund lump sum withdrawal benefit accrues to a person in any year of assessment commencing on or after 1 March 2010, the rate of tax referred to in section 5(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum withdrawal benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa); and
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa);
- (dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa),

is set out in the table below:

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

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

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa); and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum (withdrawal) benefit contemplated in item (i)(aa).

(b)(i) If a retirement fund lump sum benefit accrues to a person in any year of assessment commencing on or after 1 March 2010, the rate of tax referred to in section 5(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa);
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa); and
- (dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa),

is set out in the table below:

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

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

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa); and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum (withdrawal) benefit contemplated in item (i)(aa).

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(c)(i) If a severance benefit accrues to a person in any year of assessment commencing on or after 1 March 2011, the rate of tax referred to in section 5(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that severance benefit;
- (bb) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the severance benefit contemplated in subitem (aa);
- (cc) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the severance benefit contemplated in subitem (aa); and
- (dd) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the severance benefit contemplated in subitem (aa),

is set out in the table below:

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

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

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

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

10. The rate of tax set out in paragraph 7 is the rate required to be fixed by Parliament in accordance with the provisions of section 48B(1) of the Income Tax Act, 1962.

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

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Appendix II

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

(Section 105)

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:		
.10		Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34.7 c/kg	34.7 c/kg
104.10	22.03	Beer made from malt:		
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/li	7.82 c/li
.20		Other	R50.20/li absolute alcohol	R50.20/li absolute alcohol
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):		
	22.05	Vermouth and other wine of fresh grapes		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
		flavoured with plants or aromatic substances:		
.02		Sparkling wine	R6.67/li	R6.67/li
.04		Unfortified wine	R2.14/li	R2.14/li
.06		Fortified wine	R4.03/li	R4.03/li
104.17	22.06	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
.05		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/li	7.82 c/li
.15		Other fermented beverages, unfortified	R2.52/li	R2.52/li
.17		Other fermented beverages, fortified	R5.15/li	R5.15/li
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	R2.52/li	R2.52/li
.90		Other	R5.15/li	R5.15/li
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength:		
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:		
.10		Wine spirits, manufactured by the distillation of wine	R84.57/li absolute alcohol	R84.57/li absolute alcohol

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
.15		Spirits, manufactured by the distillation of any sugar cane product	R84.57/li absolute alcohol	R84.57/li absolute alcohol
.25		Spirits, manufactured by the distillation of any grain product	R84.57/li absolute alcohol	R84.57/li absolute alcohol
.29		Other spirits	R84.57/li absolute alcohol	R84.57/li absolute alcohol
.40		Liqueurs and other spirituous beverages	R84.57/li absolute alcohol	R84.57/li absolute alcohol
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:		
.10		Cigars, cheroots and cigarillos, of tobacco or of tobacco substitutes	R2 072.31/kg net	R2072.31 / kg net
.20		Cigarettes, of tobacco or of tobacco substitutes	R4.47/10 cigarettes	R4.47/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:		
.10		Cigarette tobacco and substitutes thereof	R194.60/kg	R194.60/kg
.20		Pipe tobacco and substitutes thereof	R108.08/kg net	R108.08/kg net