

Draft

REPUBLIC OF SOUTH AFRICA

**DRAFT 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)

16 July 2018

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.
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BILL

To amend the Income Tax Act, 1962, to amend certain provisions; to make new provision; to repeal certain provisions; to amend the Customs and Excise Act, 1964, so as to make provision for continuations; to amend the Value-Added Tax Act, 1991, so as to amend certain provisions; to make new provision; to amend the Diamond Export Levy Act, 2007, so as to amend certain provisions; to amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend a provision; to amend the Taxation Laws Amendment Act, 2013, so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2014, so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2015, so as to amend a provision; to amend the Taxation Laws Amendment Act, 2016 so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2017 so as to amend certain provisions; 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 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 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 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 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, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016 and section 2 of Act 17 of 2017

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

(a) by the substitution in subsection (1) in paragraph (e) of the definition of “company” for subparagraph (iii) of the following subparagraph:

“(iii) portfolio of a collective investment scheme in property that qualifies as a REIT as defined in **[paragraph 13.1(x) of the JSE Limited Listings Requirements]** the listing requirements of an exchange approved in consultation with the Minister and published by the Prudential Authority, as defined in section 1 of the Financial Markets Act, in terms of section 11 of that Act; or”;

(b) by the substitution in subsection (1) in the definition of “dividend” for the words preceding paragraph (a) of the following words:

“**“dividend”** means any amount, other than a dividend consisting of a distribution of an asset *in specie* declared and paid as contemplated in section 31(3), transferred or applied by a company that is a resident for the benefit or on behalf of any person in respect of any share in that company, whether that amount is transferred or applied—”;

(c) by the deletion in subsection (1) in the definition of “financial instrument” of the word “and” at the end of paragraph (d); the insertion of the word “and” at the end of paragraph (e) and the addition of the following paragraph:

“(f) any cryptocurrency.”;

(d) by the insertion in subsection (1) after the definition of “Financial Markets Act” of the following definition:

- “Financial Sector Conduct Authority’ means the Financial Sector Conduct Authority as defined in section 1 of the Financial Sector Regulation Act”;**;
- (e) by the deletion in subsection (1) of the definitions of “Financial Services Board” and “Financial Services Board Act”;
- (f) by the substitution in subsection (1) in the definition of “identical share” for paragraph (b) of the following paragraph:
- “(b) any other share that is substituted for **[that]** a listed share in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited **[Listing] Listings** Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements;”;
- (g) by the insertion in subsection (1) after the definition of “Financial Markets Act” of the following definition:
- “Financial Sector Regulation Act’ means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);”;**
- (h) by the insertion in subsection (1) after the definition of “insolvent estate” of the following definition:
- “Insurance Act’ means the Insurance Act, 2017 (Act No.18 of 2017);”;**
- (i) by the substitution in subsection (1) for the definition of “official rate of interest” of the following definition:
- “official rate of interest’ means—**
- (a) in the case of a debt which is denominated in the currency of the Republic, a rate of interest equal to the South African repurchase rate plus 100 basis points; or
- (b) in the case of a debt which is denominated in any other currency, a 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;”;
- (j) by the substitution in subsection (1) in paragraph (ii) of the proviso to paragraph (c) of the definition of “pension fund” for subparagraph (dd) of the following subparagraph:

“(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a retirement annuity fund;”;

(k) by the substitution in subsection (1) in paragraph (ii) of the proviso to paragraph (c) of the definition of “pension fund” for subparagraph (dd) of the following subparagraph:

“(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension preservation fund or a retirement annuity fund;”;

(l) by the deletion in subsection (1) in paragraph (a) of the proviso to the definition of “pension preservation fund” at the end of subparagraph (iii) of the word “or”, the insertion of the word “or” after subparagraph (iv) and the addition of the following subparagraph:

“(v) former members of a pension fund or provident fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension preservation fund and who made the election while they were members of that other fund;”;

(m) by the substitution in subsection (1) in paragraph (b) of the proviso to the definition of “pension preservation fund” for subparagraph (b) of the following subparagraph:

“(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2 (1)(a)(ii) [or] , (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund by-

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

previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act;”;

(n) by the substitution in subsection (1) in the proviso to the definition of “pension preservation fund” for paragraph (c) of the following paragraph:

“: Provided that—

(i) this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b);

(ii) a member shall, prior to his or her retirement date, be entitled to the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member—

(aa) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control; or

(bb) departed from the Republic at the expiry of a visa obtained for the purposes of—

(A) working as contemplated in paragraph (i) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No.13 of 2002); or

(B) a visit as contemplated in paragraph (b) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No.13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of that Act by the Director General, as defined in that Act; and

(iii) a member who has transferred a retirement interest in terms of paragraph 2(1)(c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) in respect of that transferred amount;”;

(o) by the substitution in subsection (1) in paragraph (a) of the proviso to the definition of “pension preservation fund” for subparagraph (iii) of the following subparagraph:

“(iii) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund or nominees or dependants of that former member in respect of whom an “unclaimed benefit” as defined in the Pension Funds Act is due or payable by that fund; or”;

(p) by the substitution in subsection (1) in the proviso to the definition of “provident fund” for paragraph (b) of the following paragraph:

“(b) that the rules of the fund—

(i) contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of subparagraphs (aa), (bb), (cc), (ee) and (ff) of paragraph (ii) of the proviso to paragraph (c) in the definition of ‘pension fund’; and

(ii) may provide for the employee to elect to transfer the retirement interest to a pension preservation fund; and”;

(q) by the deletion in subsection (1) in paragraph (a) of the proviso to the definition of “provident preservation fund” of the word “or” at the end of subparagraph (iii), the insertion of the word “or” at the end of subparagraph (iv) and the addition of the following subparagraph:

“(v) former members of a provident fund who have elected to have a lump sum benefit contemplated in paragraph 2 (1)(c) of the Second Schedule transferred to this provident preservation fund and who made the election while they were members of that other fund;”;

(r) by the substitution in subsection (1) in paragraph (b) of the proviso to the definition of “provident preservation fund” for the words preceding subparagraph (i) of the following words:

“payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2(1)(a)(ii) [or] , (b) or (c) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act that is paid or transferred to the fund by—”;

(s) by the substitution in subsection (1) of the proviso to paragraph (c) of the definition of “provident preservation fund” of the following proviso:

“: Provided that—

(i) this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b);

(ii) a member shall, prior to his or her retirement date, be entitled to the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where a member—

- (aa) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control; or
- (bb) departed from the Republic at the expiry of a visa obtained for the purposes of—
- (A) working as contemplated in paragraph (i) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No.13 of 2002); or
- (B) a visit as contemplated in paragraph (b) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No.13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of that Act by the Director General, as defined in that Act.”; and
- (iii) a member who has transferred a retirement interest in terms of paragraph 2(1)(c) of the Second Schedule to this fund shall not be entitled to payment of a withdrawal benefit as contemplated in paragraph 2(1)(b)(ii) in respect of that transferred amount;”;
- (t) by the substitution in subsection (1) in paragraph (a) of the proviso to the definition of “pension preservation fund” for subparagraph (iv) of the following subparagraph:
- “(iv) persons who have elected to transfer to that fund amounts awarded to those persons in terms of any court order contemplated in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), from any pension fund, [or] pension preservation fund, provident fund or provident preservation fund for the benefit of those persons;”;
- (u) by the substitution in subsection (1) in paragraph (b) of the definition of “REIT” for subparagraph (ii) of the following subparagraph:
- “(ii) as shares in a REIT as defined in the [**JSE Limited Listings Requirements**] the listing requirements of an exchange approved in consultation with the Minister and published by the Prudential Authority, as defined in section 1 of the Financial Markets Act, in terms of section 11 of that Act;”;
- (v) by the substitution in subsection (1) for the definition of “relative” of the following definition:

“‘**relative**’ in relation to any person, means the spouse of [**such**] that person or anybody related to [**him**] that person or [**his**] that person’s spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of ‘child’ in this section and any other person, [**such**] that child shall be deemed to be related to [**its**] the adoptive parent of that child within the first degree of consanguinity;”;

(w) by the substitution in subsection (1) for paragraph (a) of the definition of “retirement date” of the following paragraph:

“(a) a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, elects to retire and in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2(1)(a)(i) [**or (c)**] of the Second Schedule on or subsequent to attaining normal retirement age; or”.

(2) Paragraphs (j) and (w) of subsection (1) are deemed to have come into operation on 1 March 2018 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (k) of subsection (1) comes into operation on 1 March 2019 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraphs (n) and (p) and (s) of subsection (1) come into operation on 1 March 2019.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act, section 2 of Act 39 of 2013, section 2 of Act 44 of 2014, section 1 of Act 23 of 2015 and section 1 of Act 16 of 2016

2. (1) Section 3 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“The Commissioner may, in writing, and on such conditions as may be agreed upon between the Commissioner and the [**executive officer of the Financial Services Board appointed in terms of section 13 of the Financial Services**

Board Act] Financial Sector Conduct Authority delegate to [that executive officer] the Financial Sector Conduct Authority his or her power—”;

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

“(6) Any person aggrieved by a decision of the [executive officer] Financial Sector Conduct Authority to approve or to withdraw an approval of a fund in terms of subsection (5) must, notwithstanding section [26(2) of the Financial Services Board Act] 219 of the Financial Sector Regulation Act, lodge his or her objection with the Commissioner in accordance with the provisions of Chapter 9 of the Tax Administration Act.”; and

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

“(7) A decision by the [executive officer] Financial Sector Conduct Authority against which an objection has been lodged is, for the purpose of subsection (6), deemed to be a decision of the Commissioner.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2018.

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 90 of 1964, 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 5 of Act 113 of 1977, 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 3 of Act 90 of 1988, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 10 of Act 30 of 2002, section 15 of Act 45 of 2003, section 4 of Act 20 of 2006, section 4 of Act 8 of 2007, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009, section 7 of Act 7 of 2010, section 8 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 28 of Schedule 1 to that Act and section 5 of Act 31 of 2013, section 6 of Act 15 of 2016 and section 3 of Act 17 of 2017

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

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

“(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”; and

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

“(c) ‘B’ represents the taxpayer’s taxable income (excluding any lump sum benefit or severance benefit) for the said year;”.

Amendment of section 6 of Act 58 of 1962, as amended by section 4 of Act 90 of 1962, section 3 of Act 6 of 1963, section 5 of Act 72 of 1963, section 8 of Act 55 of 1966, section 7 of Act 95 of 1967, section 7 of Act 76 of 1968, section 8 of Act 89 of 1969, section 7 of Act 88 of 1971, section 5 of Act 104 of 1980, section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001, section 11 of Act 30 of 2002, section 35 of Act 12 of 2003, section 6 of Act 16 of 2004, section 3 of Act 9 of 2005, section 7 of Act 31 of 2005, section 20 of Act 9 of 2006, section 5 of Act 8 of 2007, section 1 of Act 3 of 2008, section 7 of Act 60 of 2008, section 6 of Act 17 of 2009, section 8 of Act 7 of 2010, sections 6(3) and 9 of Act 24 of 2011, section 2 of Act 13 of 2012, section 4 of Act 23 of 2013, section 3 of Act 42 of 2014, section 4 of Act 13 of 2015, section 4 of Act 25 of 2015, section 5 of Act 13 of 2016, section 4 of Act 14 of 2017 and section 3 of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2018

4. Section 6 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

“(6)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the amounts allowed to the natural person by way of rebates under subsection (2) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

Amendment of section 6A of Act 58 of 1962, as inserted by section 10 of Act 24 of 2011 and amended by section 3 of Act 13 of 2012, section 6 of Act 22 of 2012, section 5 of Act 23 of 2013, sections 6 and 7 of Act 31 of 2013, section 4 of Act 42 of 2014, section 5 of Act 13 of 2015, section 6 of Act 13 of 2016, section 5 of Act 14 of 2017 and section 4 of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2018

5. (1) Section 6A of the Income Tax Act, 1962, is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

- “(1) In determining the normal tax payable by any natural person there must be deducted an amount, to be known as the medical scheme fees tax credit, equal to the sum of the amounts allowed to that natural person by way of rebates under subsection (2), subject to subsection (3A).”;
- (b) by the substitution in subsection (2)(a) after subparagraph (ii) for the full stop of a comma and by the addition after that subparagraph of the following words:
“that relate to benefits from that fund in respect of that person or of any person that is a dependant of that person.”;
- (c) by the substitution in subsection (2)(b) for subparagraphs (i), (ii) and (iii) of the following subparagraphs respectively:
- “(i) (aa) R303, in respect of benefits to the person, or if the person is not a member of a medical scheme in respect of benefits to a dependant who is a member of a medical scheme;
- [(ii)] (bb) R606, in respect of benefits to the person, and one dependant; or
- [(iii)] (cc) R606, in respect of benefits to **[the person and one dependant , plus R204 in respect of benefits to each additional dependant,]** two dependants; and ”;
- (ii) R204, in respect of benefits to each additional dependant.”;
- (d) by the insertion after subsection (3) of the following subsection:
“(3A) Where more than one person pays any fees in respect of benefits to a person or dependant, the amount allowed to be deducted in respect of the medical scheme fees tax credit under subsection (2)(b) must be an amount that bears to the total amount allowable in respect of that person or dependant under that subsection the same ratio as the amount of the fees paid by that person bears to the total amount of the fees payable.”.
- (e) by the substitution for subsection (4) of the following subsection:
 “(4) For the purposes of this section a ‘**dependant**’ in relation to a person means a ‘dependant’ as defined in section **[1 of the Medical Schemes Act]** 6B(1).”; and
- (f) by the addition after subsection (4) of the following subsection:
“(5)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that with effect from a date or dates mentioned in that announcement, the amounts allowed

to the natural person by way of rebates under subsection (2) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 6B of Act 58 of 1962, as inserted by section 7 of Act 22 of 2012 and amended by section 3 of Act 43 of 2014, section 5 of Act 25 of 2015 and section 9 of Act 15 of 2016

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

- (a) by the substitution in subsection (1) in the definition of “dependant” at the end of paragraph (c) for the word “and” of the word “or”; and
- (b) by the addition after subsection (5) of the following subsection:

“(6)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the amounts allowed to the natural person by way of rebates under subsection (3) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969 and amended by section 5 of Act 94 of 1983, section 5 of Act 85 of 1987, section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009, section 7 of Act 18 of 2009, section 11 of Act 24 of 2011, section 3 of Act 22 of 2012, section 6 of Act 25 of 2015, section 10 of Act 15 of 2016 and section 4 of Act 17 of 2017

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

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

“(i) in determining the amount of the taxable income that is attributable to that income, proportional amount, taxable capital gain or amount[,]—

(aa) any allowable deductions contemplated in [section] sections 11F and 18A must be deemed to have been incurred proportionately in respect of taxable income derived from sources within and outside the Republic[,];

(bb) the deduction under section 11F must be allocated in relation to the taxable income from sources within and outside the Republic before taking into account any deduction in terms of that section, subsection (1C) and section 18A; and

(cc) the deduction under section 18A must be allocated in relation to taxable income from sources within and outside the Republic before taking into account any deduction in terms of that section and subsection (1C);”; and

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

“(1D) Notwithstanding [the provisions of] subsection (1C), the deduction of any tax paid or proved to be payable as contemplated in that subsection shall not in aggregate exceed the total taxable income (before taking into account any such deduction) attributable to income which is subject to taxes as contemplated in that subsection, provided that in determining the amount of the taxable income that is attributable to that income, any allowable deductions contemplated in [section] sections 11F and 18A must be deemed to have been incurred proportionately in the ratio that that income bears to total income.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999,

section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005, section 8 of Act 35 of 2007, section 4 of Act 3 of 2008, section 8 of Act 60 of 2008, section 10 of Act 17 of 2009, section 15 of Act 24 of 2011, section 8 of Act 31 of 2013 and section 4 of Act 43 of 2014

8. (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the insertion in subsection (8) after paragraph (a) of the following paragraph:

“(aA) In determining, for purposes of paragraph (a), whether an amount received by or that accrued to a person who is not a resident would have constituted income had that person been a resident, the provisions of section 10B(2)(a) must be disregarded in respect of a receipt or accrual consisting of or derived, directly or indirectly, from a foreign dividend—

(i) paid or payable by a company if—

(aa) more than 50 per cent of the total participation rights, as defined in section 9D(1), or of the voting rights in that company are directly or indirectly held or are exercisable, as the case may be, by that person or by any one or more persons that are connected persons in relation to that person;

(bb) the resident who made the donation, settlement or other disposition or any person that is a connected person in relation to that resident is a connected person in relation to that person; and

(ii) to the extent to which that foreign dividend is not derived from an amount that must be included in the income of the resident who made that donation, settlement or other disposition or that must be attributed to that resident as a capital gain.”.

(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of amounts received or accrued on or after that date.

Amendment of section 7C of Act 58 of 1962, as inserted by section 12 of Act 15 of 2016 and amended by section 5 of Act 17 of 2017

9. (1) Section 7C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(ii) for the words following subparagraph (bb) of the following words:

“by [the] a trust referred to in subparagraph (i) [or by a beneficiary of that trust] whether alone or jointly with any person that is a connected person in relation to that trust.”.

(2) Subsection (1) is deemed to have come into operation on 19 July 2017 and applies in respect of any amount owed by a trust or a company in respect of a loan, advance or credit provided to that trust or that company before, on, or after that date.

Insertion of section 7F in Act 58 of 1962

10. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 7E:

“Deduction of interest repaid to SARS.

7F. In determining the taxable income derived by any person during a year of assessment, any amount of interest paid by SARS to that person under a tax Act and included in the taxable income of that person in terms of section 7E that has to be repaid by that person to SARS, must be deducted from that person’s taxable income in the year during which that amount is repaid to SARS.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2018 and applies to amounts of interest repaid to SARS 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, section 7 of Act 8 of 2007, section 13 of Act 7 of 2010, section 20 of Act 24 of 2011, section 10 of Act 22 of 2012 and section 14 of Act 15 of 2016

11. Section 8E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in paragraph (b)(ii) of the definition of “hybrid equity instrument” for item (aa) of the following item:

“(aa) that share does not rank *pari passu* as regards its participation in dividends or foreign dividends with all other [ordinary] equity shares in the capital of the relevant company or, where the [ordinary] equity shares in such company are divided into two or more classes, with the shares of at least one of such classes; or”.

Amendment of section 8EA of Act 58 of 1962, as inserted by section 12 of Act 22 of 2012 and amended by section 11 of Act 31 of 2013, section 7 of Act 43 of 2014, section 15 of Act 15 of 2016 and section 10 of Act 17 of 2017

12. Section 8EA of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2A) of the following subsection:

“(2A) Where a preference share that was issued in terms of an agreement, all the terms of which were finally agreed to before 1 April 2012 by all the parties to that agreement, constitutes a third-party backed **[instrument]** share solely by reason of an enforcement right acquired in accordance with the terms of that agreement and that enforcement right is cancelled on or after 26 October 2016 and on or before 31 December 2017, the provisions of subsection (2) will not apply in respect of any dividend or foreign dividend that accrues in respect of that share after the date of cancellation of that enforcement right.”.

Amendment of section 8F of Act 58 of 1962, as substituted by section 12 of Act 31 of 2013 and amended by section 8 of Act 43 of 2014, section 9 of Act 25 of 2015, section 16 of Act 15 of 2016 and section 11 of Act 17 of 2017

13. (1) Section 8F of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Any amount that is incurred by a company in respect of interest on or after the date that the **[interest]** instrument becomes **[interest]** a hybrid debt instrument is—”.

(2) Subsection (1) is deemed to have come into operation on 18 December 2017.

Amendment of section 8FA of Act 58 of 1962, as inserted by section 14 of Act 31 of 2013 and amended by section 15 of that Act, section 9 of Act 43 of 2014, section 10 of Act 25 of 2015, section 17 of Act 15 of 2016 and section 12 of Act 17 of 2017

14. (1) Section 8FA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Any amount that is incurred by a company in respect of interest on or after the date that the **[instrument]** interest becomes **[a]** hybrid **[debt instrument]** interest is—”.

(2) Subsection (1) is deemed to have come into operation on 18 December 2017.

Amendment of section 9 of Act 58 of 1962, as substituted by section 22 of Act 24 of 2011 and amended by section 16 of Act 31 of 2013, section 10 of Act 43 of 2014, section 11 of Act 25 of 2015 and section 18 of Act 15 of 2016

15. Section 9 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(k)(i) for item (aa) of the following item:

“(aa) that asset is not **[attributable to]** effectively connected with a permanent establishment of that person which is situated outside the Republic; and”.

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, section 12 of Act 60 of 2008, section 15 of Act 7 of 2010, section 24 of Act 24 of 2011, section 13 of Act 22 of 2012, section 18 of Act 31 of 2013, section 11 of Act 43 of 2014, section 12 of Act 25 of 2015, section 19 of Act 15 of 2016 and section 14 of Act 17 of 2017

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

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

“**‘disposal’** means a disposal as defined in paragraph 1 of the Eighth Schedule **[or any event treated as a disposal in terms of section 9H]**”;

(b) by the substitution in subsection (1) in the definition of “equity share” for the words preceding paragraph (a) of the following words:

“**‘equity share’**, includes a participatory interest in a portfolio of a collective investment scheme in securities and a portfolio of a hedge fund collective investment scheme excluding a share which at any time **[during that period]** prior to the disposal of that share was—”;

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

“(2A) Subsection (2) does not apply in respect of so much of the amount received or accrued in respect of the disposal of an equity share contemplated in that subsection, other than an equity share held for longer than five years, as does not exceed the expenditure allowed in respect of that share in terms of section 12J(2).”; and

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

“(3) The provisions of this section shall not apply to any equity share if at the time of the **[disposal]** receipt or accrual of any amount (other than an amount constituting a dividend or foreign dividend) in respect of that share the taxpayer was a connected person in relation to the company that issued that share and—

(a) more than 50 per cent of the market value of the equity shares of that company was attributable directly or indirectly to immovable property other than—

(i) immovable property held directly or indirectly by a person that is not a connected person in relation to the taxpayer; or

- (ii) immovable property held directly or indirectly for a **[continuous period of more than]** a period of at least three years immediately prior to that **[disposal]** receipt or accrual; or
- (b) that company acquired any asset during the period of three years immediately prior to that **[disposal]** receipt or accrual and amounts were paid or payable by any person to any person other than that company for the use of that asset while that asset was held by that company during that period.”.

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, sections 9 and 96 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, section 12 of Act 17 of 2009, sections 16 and 146 of Act 7 of 2010, section 25 of Act 24 of 2011, sections 14 and 156 of Act 22 of 2012, section 19 of Act 31 of 2013, section 12 of Act 43 of 2014, section 13 of Act 25 of 2015, section 20 of Act 15 of 2016 and section 15 of Act 17 of 2017

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

- (a) by the substitution in subsection (1) in the definition of “controlled foreign company” for paragraph (b) of the following paragraph:
 - “(b) any foreign company where the financial results of that foreign company are reflected in the consolidated financial statements, as contemplated in IFRS 10, of any company that is a resident[.];”;
- (b) by the substitution in the proviso to subsection (2A) for paragraph (k) of the following paragraph:
 - “(k) for the purposes of section 24I and 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 of that company; and”;
- (c) by the renumbering in the further proviso to subsection (2A) of paragraph (ii)(cc) as paragraph (iii).

Amendment of section 9HA of Act 58 of 1962, as inserted by section 15 of Act 25 of 2015 and amended by section 22 of Act 15 of 2016

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

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

“(a) assets disposed of **[to] for the benefit of** his or her surviving spouse as contemplated in subsection (2);”;

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

“at the date of that person’s death for an amount received or accrued equal to the market value as contemplated in paragraph **[31] 1** of the Eighth Schedule of those assets as at that date.”; and

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

“(3) If any asset that is treated as having been disposed of by a deceased person as contemplated in subsection (1) is transferred directly to an heir or legatee of that person, that heir or legatee must be treated as having acquired that asset for an amount of expenditure incurred equal to the market value as contemplated in paragraph **[31] 1** of the Eighth Schedule of that asset as at the date of that deceased person’s death.”.

Insertion of section 9HB in Act 58 of 1962

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

“Transfer of asset between spouses.

9HB. (1)(a) Subject to subsection (3), a person (hereinafter referred to as ‘the transferor’) must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as ‘the transferee’).

(b) The transferee must be treated as having—

(i) acquired the asset on the same date that such asset was acquired by the transferor;

(ii) incurred an amount of expenditure equal to the expenditure contemplated in paragraph 20 that was incurred by that transferor in respect of that asset;

(iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor;

(iv) used that asset in the same manner that it was used by the transferor; and

(v) received an amount equal to any amount received by or accrued to that transferor in respect of that asset that would have constituted proceeds on disposal of that asset had that transferor disposed of it to a person other than the transferee.

(2) For the purposes of subsection (1)—

(a) a person whose spouse dies must be treated as having disposed of an asset to that spouse immediately before the date of death of that spouse, if ownership of that asset is acquired by the deceased estate of that spouse in settlement of a claim arising under section 3 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984); or

(b) a person must be treated as having disposed of an asset to his or her spouse, if that asset is transferred to that spouse in consequence of a divorce order or, in the case of a union contemplated in paragraph (b) or (c) of the definition of ‘spouse’ in section 1, an agreement of division of assets which has been made an order of court.

(3) Subsection (1) must not apply in respect of the disposal of an asset by a person to his or her spouse who is not a resident, unless the asset disposed of is an asset contemplated in section 9J or in paragraph 2(1)(b) of the Eighth Schedule.

(4) A person must, if his or her spouse is a resident, in the case of an asset consisting of trading stock, livestock or produce contemplated in the First Schedule, be treated as having disposed of that asset for an amount received or accrued that is equal to, the amount that was allowed as a deduction in respect of that asset for purposes of determining that person’s taxable income, before the inclusion of any taxable capital gain, for the year of assessment.

(5) Where a person acquires an asset that constitutes trading stock from his or her spouse that person and his or her spouse must, for purposes of determining any taxable income derived by that person, be deemed to be one and the same person with respect to the date of acquisition of that asset by that person and the amount and date of incurral by that spouse of any cost or expenditure incurred in respect of that asset as contemplated in section 11 (a) or 22 (1) or (2).”.

Insertion of section 9J in Act 58 of 1962

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

“Interest of non-resident persons in immovable property.

9J. (1) Any amount received or accrued in respect of the disposal by a person of trading stock constituted by—

- (a) immovable property situated in the Republic held by that person; or
- (b) any interest or right of whatever nature of that person to or in immovable property situated in the Republic.

shall be an amount received or accrued from a source within the Republic.

(2) For purposes of subsection (1) any interest or right in immovable property situated in the Republic includes—

- (a) rights to variable or fixed payments as consideration for the working of, or the right to work mineral deposits, sources and other natural resources; or
- (b) any equity shares held by a person in a company or ownership or the right to ownership of a person in any other entity or a vested interest of a person in any assets of any trust, if—
 - (i) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property; and
 - (ii) 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 shares in that company or ownership or right to ownership of that other entity.”.

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, sections 8 and 62 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, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 31 of Schedule 1 to that Act, sections 19, 144, 157 and 166 of Act 22 of 2012, section 23 of Act 31 of 2013, section 14 of Act 43 of 2014, section 16 of Act 25 of 2015, section 23 of Act 15 of 2016 and section 16 of Act 17 of 2017

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

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

“(gJ) any amount received by or accrued to a person who is a member of a bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), from a scheme or fund as contemplated in section 28(1)(g) of that Act, other than an amount in respect of a pension fund or a provident fund;”;

(b) by the substitution in subsection (1)(h) for subparagraph (i) of the following subparagraph:

“(i) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is received by or accrues **[by or]** to that person; or”;

(c) by the substitution in subsection (1)(qA)(ii) for the words preceding subitem (aa) of the following words:

“in the case of a scholarship or bursary granted to enable or assist a person with a disability as defined in section 6B(1) who is a member of the family of an employee, as defined in paragraph 1 of the **[Fourth] Seventh** Schedule, in respect of whom that employee is liable for family care and support, to study—”;

(d) by the substitution in subsection (1)(yA) for subparagraphs (aa) and (bb) of the following subparagraphs:

“(aa) that amount is received or accrued in relation to projects that are approved by the Minister **[and]; and**

- (bb) that agreement provides that those receipts and accruals of that person must be exempt; **[and]**”; and
- (e) by the addition in subsection (1) after paragraph (zK) of the following paragraph:
- “(zL) any amount received or accrued previously prohibited as a deduction during any year of assessment under section 23(o)(iii) that is recovered in any subsequent year of assessment;”.
- (2) Paragraph (a) of subsection (1) comes into operation on 1 March 2019.
- (3) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March, 2018 and applies in respect of years of assessment commencing on or after that date.
- (4) Paragraph (e) of subsection (1) comes into operation on 1 April 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012, section 20 of Act 22 of 2012, section 25 of Act 31 of 2013, section 15 of Act 43 of 2014, section 6 of Act 13 of 2015, section 25 of Act 15 of 2016 and section 8 of Act 14 of 2017

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

- (a) by the substitution in subsection (2)(c)(bb) for item (A) of the following item:
- “(A) exempt from tax in terms of paragraph (a), [(b) or] (d) or (e); or”; and
- (b) by the addition after subsection (6) of the following subsection:

“(7)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act that, with effect from a date or dates mentioned in that announcement, the numbers contemplated in subsection (3)(b)(ii)(aa) and (cc) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

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 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, sections 1 and 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, sections 30 and 161 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 33 of Schedule 1 to that Act, section 22 of Act 22 of 2012, section 27 of Act 31 of 2013, section 17 of Act 43 of 2014, section 18 of Act 25 of 2015, section 26 of Act 15 of 2016 and section 19 of Act 17 of 2017

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

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

“(v) the right of use of any pipeline, transmission line or cable or railway line contemplated in the definition of ‘affected asset’ in section 12D[:] other than an asset contemplated in paragraph (c) of that definition; or”;

(b) by the addition in paragraph (f) after subparagraph (v) of the following subparagraph:

“(vi) the right of use of any line or cable used for the transmission of electronic communications contemplated in paragraph (c) of the definition of ‘affected asset’ in section 12D:”;

(c) by the substitution in the proviso to paragraph (f) in item (dd) for the words following subitem (A) of the following words:

“where the term of the right of use is [15] 10 years or more;”;

(d) by the addition to the proviso to paragraph (f) after paragraph (dd) of the following paragraph:

“(ee) the allowance under sub-paragraph (vi) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one tenth of the said amount, whichever is the greater;”;

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

“(j)(i) an allowance equal to 25 per cent of the loss allowance relating to impairment, as contemplated in IFRS 9, in respect of debt other than in respect of lease receivables as defined in IFRS 9, if IFRS 9 is applied to that debt by that person for financial reporting purposes; or

(ii) an allowance equal to 25 per cent of so much of any debt, other than a debt contemplated in subparagraph (i), due to the taxpayer, that would have been allowed as a deduction under any other provision of this Part had that debt become bad if that debt is 90 days or more in arrears:

Provided that an allowance under this paragraph must be included in the income of the taxpayer in the following year of assessment;”;

(f) by the substitution in paragraph (jA) for the words preceding the proviso of the following words:

“notwithstanding paragraph (j), an allowance equal to 25 per cent of the loss allowance relating to impairment, as contemplated in IFRS 9, other than in respect of lease receivables as defined in IFRS 9, if the person is a covered person, other than a person that is a holding company as defined in the Banks Act, as determined by applying the criteria in paragraphs (c)(i) to (iii) and (d) of the definition of “covered person” in section 24JB(1);”;

(g) by the substitution for paragraph (nB) of the following paragraph:

“(nB) so much of any amount contemplated in paragraph (cA) or (cB) of the definition of “gross income” received by or accrued to any person as is refunded by that person;” and

(h) by the substitution in paragraph (o) for subparagraph (i) of the following subparagraph:

“(i) which qualified for an allowance or deduction in terms of section 11(e), **[11B,]** 11D, 12B, 12C, 12DA, 12E[, **14, 14bis**] or 37B(2)(a); and”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2019 and applies in respect of assets brought into use on or after that date.

(3) Paragraphs (c) and (d) of subsection (1) come into operation on 1 April 2019.

(4) Paragraph (e) of subsection (1) comes into operation on 1 January 2019 and applies in respect of years of assessment commencing on or after that date.

(5) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 January 2018 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 11F of Act 58 of 1962, as inserted by section 21 of Act 17 of 2017

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

(a) by the deletion in subsection (2) at the end paragraph (a) of the word “or” and the insertion of the word “or” at the end of paragraph (b);

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

“(ii) taxable income (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under this section and **[section]** sections 6quat(1C) and 18A.”;

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

“the taxable income (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of that person before—

(i) allowing any deduction under this section and sections 6quat(1C) and 18A; and”;

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

“(c) taken into account in determining the amounts exempt under section 10C;” and

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

“(4) Any amount paid or contributed by an employer of the person on behalf of or for the benefit of that person must be deemed—

(a) (i) to be equal to the amount of the cash equivalent of the value of the taxable benefit contemplated in paragraph 2(l) of the Seventh Schedule determined in accordance with paragraph 12D of that Schedule; or

(ii) if that amount is paid by an employer to a retirement annuity fund, to be equal to the amount of the cash equivalent of the value of the taxable benefit contemplated in paragraph 2(h) of the Seventh Schedule determined in accordance with paragraph 12D of that Schedule; and”.

(2) Subsection (1) comes into operation on 1 March 2019.

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007, section 22 of Act 35 of 2007, section 20 of Act 60 of 2008, section 19 of Act 17 of 2009, section 33 of Act 24 of 2011, section 24 of Act 22 of 2012, section 32 of Act 31 of 2013, section 20 of Act 25 of 2015 and section 23 of Act 17 of 2017

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

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

“Deduction in respect of assets used by manufacturers or [hotelkeepers] hotel keepers and in respect of aircraft and ships, and in respect of assets used for storage and packing of agricultural products.”;

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

“(d) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (e)) 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 and which was or is brought into use for the first time by the taxpayer for the purposes of the taxpayer’s trade as **[hotelkeeper] hotel keeper** and is used by the taxpayer in a hotel, except any vehicle or equipment for offices or managers’ or servants’ rooms;”;

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

“(e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (d)) 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 and which was or is let by the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee’s trade as **[hotelkeeper] hotel keeper** and used by the lessee in a hotel, except any vehicle or equipment for offices or managers’ or servants’ rooms;”.

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 12 of Act 3 of 2008, section 21 of Act 60 of 2008, section 20 of Act 17 of 2009, section 22 of Act 7 of 2010, section 33 of Act 31 of 2013, section 19 of Act 43 of 2014 and section 24 of Act 17 of 2017

26. (1) Section 12D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) [6.67] 10 per cent of the cost incurred in respect of any asset contemplated in paragraph (c) of the definition of “affected asset”.”.

(2) Subsection (1) comes into operation on 1 April 2019 and applies in respect of assets acquired on or after that date.

Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 and amended by section 25 of Act 17 of 2009 and section 38 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 37 of Schedule 1 to that Act, section 36 of Act 31 of 2013, section 23 of Act 43 of 2014, section 23 of Act 25 of 2015, section 32 of Act 15 of 2016 and section 28 of Act 17 of 2017

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

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

“(b) the company is not a controlled group company in relation to a group of companies on the date of the acquisition of any shares in that company by a venture capital company and at any time during any year of assessment after that date;”;

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

“(f) the sum of the investment income, as defined in section 12E(4)(c), derived by that company **[during any year of assessment]** as does not exceed an amount equal to 20 per cent of the gross income of that company [for that year] in respect of a year of assessment that is the earlier of—

(i) the year of assessment during which that company commences trade;

or

(ii) the year of assessment following a period of 36 months following the date of acquisition of any shares by the Venture Capital Company in that company,

and in any subsequent year of assessment;”;

(c) by the deletion in subsection (1) at the end of paragraph (e) of the definition of “qualifying company” of the word “and” and by the addition of the following paragraph:

“(g) substantially the whole of the aggregate amount received by or accrued to that company during a year of assessment from the carrying on of any trade was derived from transactions with persons other than—

(i) any person holding a direct or indirect interest in that company; or

(ii) any person that is a connected person in relation to a person referred to in subparagraph (i); and”;

(d) by the addition in subsection (1) to the definition of “qualifying company” of the following paragraph:

“(h) that company does not have more than one class of shares in issue on the date of the acquisition of any shares in that company by a venture capital company and at any time during any year of assessment after that date.”;

(e) by the substitution in subsection (1) in the definition of “qualifying share” for paragraph (b) of the following paragraph:

“(b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph [(a)] (b)(i) of the definition of ‘hybrid equity instrument’ in that section; or”;

(f) by the substitution in subsection (3A) for paragraphs (b) and (c) of the following paragraphs respectively:

“(b) the Commissioner must, after due notice to the venture capital company to effect corrective steps, withdraw any approval in terms of subsection (5) with effect [from the date of that approval by the Commissioner of that company as a venture capital company in terms of that subsection] from the commencement of the year of assessment during which the period stated in that notice falls; and

(c) [the Commissioner must withdraw the approval of that company in terms of subsection (5) and] an amount equal to 125 per cent of the expenditure incurred by any person to acquire shares issued by the company must be included in the income of the company in the year of assessment in which the approval is withdrawn by the Commissioner under paragraph (b).”;

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

“(g) the company is licensed in terms of section [7] 8(5) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).”;

(h) by the substitution in subsection (5) for the full stop at the end of paragraph (g) of a semicolon and the addition of the following paragraph:

“(h) the company does not have more than one class of shares in issue in respect of a year of assessment during which that company commences trade and at any time during any year of assessment after that date.”;
and

(i) by the substitution in subsection (6A) for the words following paragraph (c) of the following words:

“the Commissioner must after due notice to the company withdraw that approval with effect from **[the date of approval by the Commissioner of that company as a venture capital company]** the commencement of the year of assessment during which the period falls that is stated in that notice during which corrective steps acceptable to the Commissioner must be taken if corrective steps acceptable to the Commissioner are not taken by the company within **[a]** the period stated in [the] that notice.”.

(2) Subsection (1) comes into operation on 1 January 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 12N of Act 58 of 1962, as inserted by section 29 of Act 7 of 2010 and amended by section 31 of Act 31 of 2013 and section 24 of Act 43 of 2014

28. Section 12N of the Income Tax Act, 1962, is hereby amended by the substitution in subsection 1 for the words following paragraph (e) of the following words:

“the taxpayer must, for the purposes of any deduction contemplated in section 11D, 12B, 12C, 12D, 12F, 12I, 12S, 13, **[13bis,]** 13ter, 13quat, 13quin, 13sex or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.”.

Amendment of section 12Q of Act 58 of 1962, as inserted by section 41 of Act 31 of 2013 and amended by section 42 of Act 31 of 2014, section 27 of Act 25 of 2015 and section 29 of Act 17 of 2017

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

(a) by the substitution in subsection (1) for the definition of “international shipping income” of the following definition:

“**‘international shipping income’** means the receipts and accruals of a person derived from international shipping mainly from the operation of one or more ships contemplated in paragraph (a) of the definition of ‘South African Ship’;” and

(b) by the substitution in subsection (1) for the definition of “South African Ship” of the following definition:

“**‘South African ship’** means a ship—

(a) which is registered in the Republic in accordance with Part 1 of Chapter 4 of the Ship Registration Act, 1998 (Act No. 58 of 1998); or

(b) another ship or ships used temporarily in lieu of the ship contemplated in paragraph (a) by virtue of that ship being subject to repair or maintenance.”.

(2) Subsection (1) comes into operation 1 April 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 12T of Act 58 of 1962, as amended by section 29 of Act 25 of 2015 and section 9 Of Act 14 of 2017

30. (1) Section 12T of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (9) of the following subsection:

“(9)(a) The [**Financial Services Board Act established under the Financial Services Board Act (hereafter Financial Services Board)**] Financial Sector Conduct Authority shall be responsible for supervising and enforcing compliance with any regulations made by the Minister in terms of subsection (8).

(b) The supervising and enforcing compliance contemplated in paragraph (a) shall form part of the legislative mandate of the [**Financial Services Board Act**] Financial Sector Conduct Authority.

(c) The [**Financial Services Board Act**] Financial Sector Conduct Authority, acting through the Registrar, as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), in supervising and enforcing compliance as contemplated in paragraph (a), shall exercise any power afforded to the Registrar as defined in section 1 of that Act and in any of the Acts contemplated in the definition of “law” in section 1 of that Act.”.

(2) Subsection (1) is deemed to have come into operation 1 April 2018 and applies in respect of years of assessment commencing on or after that date.

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, section 4 of Act 4 of 2008, section 31 of Act 7 of 2010 and section 31 of Act 25 of 2015

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

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

“(e) of such portion of any building improvements (other than repairs and other than improvements in respect of the cost of which, or of any portion thereof, an allowance under the preceding provisions of this subsection is or was deductible from the income of the taxpayer for the current or any previous year of assessment) commenced on or after 1 January 1964, as was during the year of assessment in question used by the taxpayer for the purposes of his trade of **[hotelkeeper]** hotel keeper or was during the year of assessment in question let by the taxpayer and used by the lessee for the purposes of the lessee’s trade of **[hotelkeeper]** hotel keeper.”;

(b) by the deletion of subsection (1A); and

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

“The allowance under subsection (2) in respect of the cost (as reduced in terms of that subsection) of any building (or portion thereof) or of any improvements (or a portion thereof) shall be such percentage of such cost as may be fixed by the Minister of Finance by regulation under subsection (4) for the grade of hotel which is, in terms of a determination of the board referred to in subsection (2), applicable in respect of the hotel in question on the last day of the year of assessment: Provided that where such hotel is graded by the said board for the first time during any year of assessment (hereinafter referred to as the subsequent year) subsequent to any year of assessment (hereinafter referred to as the earlier year) during which such building (or the relevant portion thereof) or such improvements (or the relevant portion thereof) was or were used in carrying on the trade of **[hotelkeeper]** hotel keeper, and the taxpayer is entitled to the said

allowance in respect of the subsequent year, the allowance for the subsequent year (as determined in accordance with the said regulation) shall, if—”.

Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008, section 29 of Act 60 of 2008, sections 29 and 106 of Act 17 of 2009, section 33 of Act 7 of 2010, section 41 of Act 24 of 2011, section 34 of Act 22 of 2012, section 48 of Act 31 of 2013, section 32 of Act 25 of 2015 and section 38 of Act 15 of 2016

32. Section 13quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for paragraph (bA) of the following paragraph:

“(bA) Where a municipality has a population of less than 1 million persons the Minister may by notice in the *Gazette* approve that municipality for the purposes of paragraph (b) in terms of subsection (6)[(c)] (b).”.

Amendment of section 18A of Act 58 of 1962, as 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, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012, section 52 of Act 31 of 2013, section 29 of Act 43 of 2014, section 3 of Act 44 of 2014, section 34 of Act 15 of 2015 and section 31 of Act 17 of 2017

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

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

“(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6quat(1C).”;

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

“a receipt issued by the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department concerned, **[on which the following details are given, namely] containing—**”;

(c) by the substitution in subsection (2)(a) for subparagraphs (i), (iii) and (iv) of the following subparagraphs respectively:

- “(i) the reference number of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department issued by the Commissioner for the purposes of this section;
- (iii) the name of the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation or the department which received the donation, together with an address to which enquiries may be directed in connection therewith;
- (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, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation concerned or, in the case of a department in carrying on the relevant public benefit activity; or”;

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

“(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation (other than an institution, board or body in respect of which subsection (5B) applies) has—

- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation for purposes not covered by such objects;
- (b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to that organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation by that taxpayer; or

- (c) issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection,
- the Commissioner may by notice in writing addressed to that person direct that—
- (i) any donation in respect of which a receipt was issued by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation during any year of assessment specified in that notice, will be deemed to be taxable income of that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation in that year; and
- (ii) if corrective steps are not taken by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation within a period stated by the Commissioner in that notice, any receipt issued by that public benefit organisation, institution, board, body or agency, programme, fund, High Commissioner, office, entity or organisation in respect of any donation made on or after the date specified in that notice shall not qualify as a valid receipt for purposes of subsection (2).”; and
- (e) by the substitution in subsection (3B) for paragraph (b) of the following paragraph:
- “(b) issued by [**a financial institution**] an eligible financial institution as defined in section 1 of the [**Financial Services Board**] Financial Sector Regulation Act.”.

(2) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 April 2018.

Amendment of section 19 of Act 58 of 1962, as substituted by section 32 of Act 17 of 2017

- 34.** (1) Section 19 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “concession or compromise” of the following definition:
- ““concession or compromise” means any arrangement in terms of which—
- (a) a debt is—
- (i) cancelled, waived or remitted; or

(ii) extinguished by—

(aa) redemption of the claim in respect of that debt; or

(bb) merger by reason of the acquisition of the claim in respect of that debt,

by the person owing that debt or by any person who is a connected person in relation to that person, otherwise than as the result or by reason of the implementation of an arrangement described in paragraph (b);

(b) an interest-bearing debt owed by a company is settled, directly or indirectly,—

(i) by being converted to or exchanged for shares in that company; or

(ii) by applying the proceeds from shares issued by that company,

where that company is, immediately after that arrangement a connected person in relation to the person that acquired shares by reason or in consequence of that arrangement.”;

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

“‘debt benefit’, in respect of a debt owed by a person to another person, means—

(a) in the case of an arrangement described in paragraph (a)(i) of the definition of ‘concession or compromise’, the amount cancelled, waived or remitted;

(b) in the case of an arrangement described in paragraph (a)(ii) of the definition of ‘concession or compromise’, the amount by which the face value of the claim in respect of the debt held by the person to whom the debt is owed prior to the entering into of that arrangement exceeds the expenditure incurred in respect of—

(i) the redemption of that debt; or

(ii) the acquisition of the claim in respect of that debt;

(c) in the case of an arrangement described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement did not hold a direct or an indirect interest in that company prior to entering into that arrangement, the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds

the market value of the shares held or acquired by reason or as a result of the implementation of that arrangement; or

- (d) in the case of an arrangement described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement held—
- (i) a direct interest or an indirect interest in that company; or
 - (ii) a direct interest as well as an indirect interest in that company,
- prior to the entering into of that arrangement, the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds the amount by which the market value of any direct interest or indirect interest held by that person immediately after the implementation of that arrangement exceeds, solely as a result of the implementation of that arrangement, the market value of the effective interest in that company by virtue of any direct interest or indirect interest held by that person immediately prior to the entering into of that arrangement.”;

- (c) by the insertion in subsection (1) after the definition of “debt benefit” of the following definition:

“**direct interest**’ means the holding, by a person, of shares in a company;”;

- (d) by the insertion in subsection (1) after the definition of “group of companies” of the following definitions:

“**indirect interest**’ means the holding, by a person, of an interest in a company by way of holding shares in another company that holds shares in that company;

‘**interest-bearing debt**’ means any debt—

(a) in respect of which any interest, as defined in section 24J, has been or is to be incurred; or

(b) substituted, directly or indirectly, for any debt described in paragraph (a); and

‘**market value**’ in relation to shares acquired or held by reason or as a result of implementing a concession or compromise in respect of a debt means the market value of those shares immediately after the implementation of that concession or compromise.”;

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

“(a) a debt benefit in respect of a debt owed by a person arises in respect of a year of assessment by reason or as a result of a concession or compromise in respect of that debt during that year of assessment; and”;

(f) by the substitution in subsection (6) for paragraphs (a) and (b) of the following paragraphs:

“(a) a debt benefit arises during any year of assessment in respect of a debt owed by a person as contemplated in subsection (2); and

(b) the amount of that debt was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of an allowance asset that was not disposed of in a prior year of assessment.”;

(g) by the insertion after subsection (6) of the following subsection:

“(6A) Where—

(a) a debt benefit arises during any year of assessment in respect of a debt owed by a person as contemplated in subsection (2); and

(b) the amount of that debt was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of an allowance asset that was disposed of in a prior year of assessment, that person must, if the amount determined in respect of that disposal as a recovery or recoupment of a deduction or allowance is less than the amount that would have been so determined had that debt benefit been taken into account in the year in which the disposal occurred, treat the amount of that difference as an amount recovered or recouped in that year of assessment for purposes of section 8(4)(a).”; and

(h) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

“(b) to the extent that the debt is reduced by way of—

(i) a donation as defined in section 55 (1); or

(ii) any transaction to which section 58 applies[; **or**],
in respect of which donations tax is payable; or”.

(2) Paragraphs (a) to (d) of subsection (1) are deemed to have come into operation on 1 January 2018 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraphs (e) to (h) of subsection 1 come into operation on 1 January 2019 and apply in respect of years of assessment commencing on or after that date.

Amendment of section 20A of Act 58 of 1962, as inserted by section 36 of Act 45 of 2003 and amended by section 27 of Act 31 of 2005 and section 33 of Act 17 of 2009

35. Section 20A of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2)(b) at the end of subparagraph (vii) of the word “or”, by the substitution at the end of subparagraph (viii) for the full stop of the expression “; or” and by the addition of the following paragraph:

“(ix) the acquisition or disposal of any cryptocurrency.”.

Amendment of section 22B of Act 58 of 1962, as substituted by section 34 of Act 17 of 2017

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

(a) by the insertion in subsection (1) before the definition of “exempt dividend” of the following definition:

“‘deferral transaction’ means a transaction in respect of which the provisions of PART III of this Chapter were applied;”;

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

“(a) a preference share, so much of the amount of any dividend received or accrued in respect of that share as exceeds an amount determined with reference to the consideration for which that share was issued by applying an interest rate of 15 per cent per annum for the period in respect of which that dividend was received or accrued;”;

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

“‘preference share’ means a preference share as defined in section 8EA(1); and

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

“Subject to subsection (3), where a company disposes of shares in another company in terms of a transaction that is not a deferral transaction and that company held a qualifying interest in that other company at any time during the period of 18 months prior to that disposal, the amount of any exempt dividend received by or that accrued to that company in respect of the shares disposed of must—”; and

(e) by the addition after subsection (2) of the following subsection:

“(3) Where a company disposes of shares in terms of a transaction that is not a deferral transaction within a period of 18 months after having acquired those shares in terms of a deferral transaction and—

(a) within a period of 18 months prior to the acquisition of those shares by that company an exempt dividend in respect of those shares accrued to or was received by a person that—

- (i) disposed of those shares in terms of a deferral transaction; and
- (ii) was a connected person in relation to that company at any time within that period or immediately after that disposal,

that dividend must for purposes of this section be treated as a dividend that accrued to or was received by that company in respect of those shares within the period during which that company held those shares; and

(b) if those shares (hereinafter referred to as ‘new shares’) were acquired in terms of that deferral transaction in return for or by virtue of the holding, by that company, of other shares (hereinafter referred to as ‘old shares’) that were disposed of in terms of that deferral transaction—

- (i) an exempt dividend in respect of the old shares, other than a dividend consisting of new shares, that accrued to or was received by that company within a period of 18 months prior to the disposal of the old shares must for purposes of this section be treated as an amount that accrued to or was received by that company as an exempt dividend in respect of the new shares within the period during which that company held the new shares; and
- (ii) if an exempt dividend—

(aa) other than an exempt dividend consisting of new shares, accrued to or was received by that company in respect of the old shares within a period of 18 months prior to the disposal of the old shares; or

(bb) that accrued to or was received by that company as an exempt dividend in respect of the new shares was derived, directly or indirectly, from an amount that accrued to or was received by the person to whom the old shares were disposed of, within a period

of 18 months after the disposal of the old shares to that person, as an exempt dividend in respect of the old shares,
and an amount of that exempt dividend in respect of the old shares would have constituted an extraordinary dividend in respect of which subsection (2) would have applied had the person who received or to whom that dividend accrued disposed of those old shares at their market value, after receipt of that exempt dividend, in terms of a transaction that is not a deferral transaction, the higher of—
(A) the amount, if any, that would have constituted an extraordinary dividend in respect of the old shares; and
(B) the amount constituting an extraordinary dividend in respect of the new shares, as determined with reference to the aggregate of the amount that accrued to or was received by that company as an exempt dividend in respect of the new shares and the amount that is treated as having accrued to or been received by that company as an exempt dividend in respect of the new shares,
must for purposes of subsection (2) be treated as an extraordinary dividend that accrued to or was received by that company in respect of the new shares.”.

(2) Paragraphs (a), (d) and (e) subsection (1) come into operation on 1 January 2019 and apply in respect of disposals on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 19 July 2017 and apply in respect of disposals on or after that date.

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, section 37 of Act 60 of 2008, section 41 of Act 7 of 2010, sections 47 and 162 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 38 of Schedule 1 to that Act, section 42 of Act 22 of 2012, section 56 of Act 31 of 2013, section 33 of Act 43 of 2014 and section 35 of Act 17 of 2017

37. (1) Section 23 of the Income Tax Act, 1962, is hereby amended by the deletion in paragraph (o) of the word “or” at the end of subparagraph (i), the insertion of the word “or” at the end of subparagraph (ii) and the addition of the following subparagraph:

“(iii) any expenditure incurred constituting fruitless and wasteful expenditure as defined in section 1 of the Public Finance Management Act;”.

(2) Subsection (1) comes into operation on 1 April 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 23G of Act 58 of 1962, as inserted by section 16 of Act 28 of 1997 and amended by section 30 of Act 31 of 2005 and section 35 of Act 35 of 2007

38. Section 23G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) such lessor shall, notwithstanding the provisions of this Act, not be entitled to any deduction in terms of section 11(e), (f) [or], (gA)[,] or (gC)[,] or sections 12B, 12C, 12DA, 13 or 13quin in respect of an asset which is the subject matter of such sale and leaseback arrangement.”.

Amendment of section 23M of Act 58 of 1962, as inserted by section 16 of Act 31 of 2013 and amended by section 37 of Act 43 of 2014, section 41 of Act 15 of 2016 and section 39 of Act 17 of 2017

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

(a) by the substitution in subsection (1) in the definition of “adjusted taxable income” for the words preceding paragraph (a) of the following words:

“**“adjusted taxable income’** means taxable income calculated before applying this section—”;

(b) by the substitution in subsection (1) in paragraph (a) of the definition of “adjusted taxable income” for subparagraph (i) of the following subparagraph:

“(i) any amount of interest received or accrued that is included in taxable income;”;

(c) by the substitution in subsection (1) in paragraph (b) of the definition of “adjusted taxable income” for subparagraph (i) of the following subparagraph:

“(i) any amount of interest incurred that has been allowed as a deduction from income;” and

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

“(ii) that interest is determined with reference to a rate of interest that does not exceed the official rate of interest plus 100 basis points[; or].”.

Amendment of section 23N of Act 58 of 1962, as inserted by section 63 of Act 31 of 2013, amended by section 38 of Act 43 of 2014, section 40 of Act 25 of 2015, section 42 of Act 15 of 2016 and section 40 of Act 17 of 2017

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

(a) by the substitution in subsection (1) in the definition of “adjusted taxable income” for the words preceding paragraph (a) of the following words:

“**‘adjusted taxable income’** means taxable income calculated before applying this section—”;

(b) by the substitution in subsection (1) in paragraph (a) of the definition of “adjusted taxable income” for subparagraph (i) of the following subparagraph:

“(i) any amount of interest received or accrued that is included in taxable income”;

(c) by the substitution in subsection (1) in paragraph (b) of the definition of “adjusted taxable income” for subparagraph (i) of the following subparagraph:

“(i) any amount of interest incurred that has been allowed as a deduction from income”;

(d) by the deletion of subsection (5).

(2) Paragraph (d) of subsection (1) comes into operation on 1 January 2019 and applies in respect of amounts incurred on or after that date.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by 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, section 20 of Act 3 of 2008, section 38 of Act 17 of 2009, section 47 of Act 7 of 2010, section 52 of Act 24 of 2011, section 53 of Act 22 of 2012, section 68 of Act 31 of 2013, section 40 of Act 43 of 2014, section 44 of Act 25 of 2015, section 44 of Act 15 of 2016 and section 42 of Act 17 of 2017

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

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

“(ii) the devising, developing, creation, production, acquisition or restoration of any invention, patent, design, trade mark, copyright or other similar

property or knowledge contemplated in section 11[(gA) or] (gC)[, as the case may be];” and

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

“(4) Subject to section 11, in determining the taxable income of any person contemplated in subsection (2) in respect of a debt owing to that person as referred to in paragraph (b) of the definition of exchange item, to the extent that upon final realisation [it] the debt has become irrecoverable whether by reason of becoming bad or as a result in the decline in the market value of that exchange item—

- (a) the amount of any foreign exchange gain, relating to that debt or decline in market value , that is or was included in the income of that person in the current or any previous year of assessment must be deducted from the income of that person; and
- (b) the amount of any foreign exchange loss, relating to that debt or decline in market value, that is or was deducted from the income of that person in the current or any previous year of assessment must be included in the income of that person.”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 January 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 24JB of Act 58 of 1962, as inserted by section 56 of Act 22 of 2012, as substituted by section 71 of Act 31 of 2013 and amended by section 43 of Act 43 of 2014, section 46 of Act 15 of 2016 and section 44 of Act 17 of 2017

42. (1) Section 24JB of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2A) of the following subsection:

“(2A) A covered person must include in or deduct from income for a year of assessment a realised gain or a realised loss that is recognised in a statement of other comprehensive income as contemplated in IFRS 9 if that realised gain or realised loss is attributable to a change in the credit risk of the financial liability as contemplated in IFRS 9 and that instrument was issued in any year of assessment commencing on or after 1 January 2018.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2018 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 24L of Act 58 of 1962, as inserted by section 28 of Act 53 of 1999

43. (1) Section 24L of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

“The amount of any premium or like consideration received or receivable by a person in terms of an option contract, other than an amount of a capital nature, shall for the purposes of this Act be deemed to have accrued to such person on a day to day basis during the term of such option contract.”

(2) Subsection (1) comes into operation on 1 January 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 24O of Act 58 of 1962, as substituted by section 46 of Act 25 of 2015

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

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

“any interest incurred by that company in respect of that debt during a year of assessment must, to the extent to which that equity share constitutes a qualifying interest in an operating company as determined at the end of the year of assessment of that company, be deemed to have been—”; and

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

“An equity share in a company constitutes a qualifying interest in an operating company as at the end of the year of assessment of that company if at the end of the year of assessment that equity share is determined to be an equity share in—”.

(2) Subsection (1) comes into operation on 1 January 2019 and applies in respect of years of assessment ending on or after that date.

Amendment of section 25 of Act 58 of 1962, as substituted by section 22 of Act 113 of 1993, section 48 of Act 25 of 2015 and section 47 of Act 15 of 2016

45. Section 25 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) A deceased estate must—

- (a) other than for the purposes of section 6, section 6A and section 6B, be treated as if that estate were a natural person; and
- (b) if the deceased person was a resident at the time of his or her death, be treated as if that estate were a resident.”.

Amendment of section 25B of Act 58 of 1962, as substituted by section 27 of Act 32 of 2004

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

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

“(a) that capital [**arose**] consists of or is derived, directly or indirectly, from any receipts and accruals of such trust which would have constituted income if such trust had been a resident, in any previous year of assessment during which that resident had a contingent right to that amount; and”;

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

“(2B) In determining, for purposes of subsection (2A), whether an amount received by or that accrued to a trust which is not a resident would have constituted income had that trust been a resident, the provisions of section 10B(2)(a) must be disregarded in respect of an amount received or accrued consisting of or derived, directly or indirectly, from a foreign dividend—

(i) paid or payable by a company if—

(aa) more than 50 per cent of the total participation rights, as defined in section 9D(1), or of the voting rights in that company are directly or indirectly held or are exercisable, as the case may be, by that trust or by any one or more persons that are connected persons in relation to that trust;

(bb) that resident or any person that is a connected person in relation to that resident is a connected person in relation to that trust; and

(ii) to the extent to which that foreign dividend is not derived from an amount that must be included in the income of that resident or that must be attributed as a capital gain to that resident.”.

(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of any year of assessment commencing on or after that date.

Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010, section 55 of Act 24 of 2011, section 58 of Act 22 of 2012 and section 73 of Act 31 of 2013

47. (1) Section 25BA of the Income Tax Act, 1962, is hereby amended by the addition of the following subsections:

“(3) Any amount received by or accrued to a portfolio of a collective investment scheme in respect of the disposal as defined in paragraph 1 of the Eighth Schedule of a financial instrument (other than a dividend or foreign dividend) is deemed to be income and not of a capital nature if the financial instrument is disposed of within 12 months of date of acquisition.

(4) For the purposes of subsection (3) where the portfolio of a collective investment scheme holds financial instruments that constitute two or more identical assets, as defined in paragraph 32(2) of the Eighth Schedule, which were acquired by the portfolio on different dates and the portfolio has disposed of any of those financial instruments, the portfolio shall for the purposes of this section be deemed to have disposed of the financial instrument held by the portfolio for the longest period of time.

(5) Section 25B(3)(a) must not apply to deductions and allowances in respect of amounts referred to in subsection (1)(a).

(6) The aggregate of the amounts deemed to have been accrued under subsection (1) must be limited to amounts of gross income received by or accrued to the portfolio of a collective investment scheme reduced by deductions allowable under section 11.”.

(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of financial instruments disposed of on or after that date.

Amendment of section 25BB of Act 58 of 1962, as inserted by section 59 of Act 22 of 2012, substituted by section 74 of Act 31 of 2013 and amended by section 45 of Act 43 of 2014, section 50 of Act 25 of 2015, section 48 of Act 15 of 2016 and section 45 of Act 17 of 2017

48. Section 25BB of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) in the definition of “qualifying distribution” for paragraph (a) of the following paragraph:

“(a) that year of assessment is the first year of assessment and at least 75 per cent of the gross income received by or accrued to a company during [the] that first

year of assessment that the company qualifies as a REIT or controlled company, consists of rental income; **[or] and**”; and

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

“so much of any amount of tax on income proved to be payable by that trust to the government of a country other than the Republic as is attributable to the interest of that REIT or controlled company in that trust, without any right of recovery of that tax by any person, other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment, limited to the amount of taxable income that is attributable to those amounts, must be allowed to be deducted by that REIT or controlled company before taking into account any deduction in terms of subsection (2)(a)”.

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, section 40 of Act 17 of 2009, section 51 of Act 7 of 2010, section 61 of Act 22 of 2012, section 76 of Act 31 of 2013, section 52 of Act 25 of 2015 and section 49 of Act 15 of 2016

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

- (a) by the substitution in subsection (1) for the definition of “short-term insurance business” of the following definition:

“**‘short-term insurance business’** means—

- (a) short-term insurance business as defined in the Short-term Insurance Act;
 (b) micro-insurance business as defined in section 1 of the Insurance Act; or
 (c) business conducted by a foreign reinsurer as contemplated in paragraph (c) of the definition of ‘short-term insurer’;”;

- (b) by the substitution in subsection (1) for the definition of “short-term insurer” of the following definition:

“**‘short-term insurer’** means—

- (a) a short-term insurer as defined in the Short-term Insurance Act;
 (b) a micro-insurer as defined in section 1 of the Insurance Act; or

- (c) a foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of the Insurance Act;”;
- (c) by the substitution in subsection (1) for the definition of “short-term policy” of the following definition:
- “**‘short-term policy’** means—
- (a) a short-term policy as defined in the Short-term Insurance Act;
- (b) a policy issued by a micro-insurer as defined in section 1 of the Insurance Act; or
- (c) a policy issued by a foreign reinsurer as contemplated in paragraph (c) in the definition of ‘short-term insurer’”
- (d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “For the purpose of determining the taxable income derived during a year of assessment by any short-term insurer [**that is a resident**] from carrying on short-term insurance business—”; and
- (e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “Notwithstanding section 23(e), for the purpose of determining the taxable income derived during any year of assessment by any short-term insurer [**that is a resident**] from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that short-term insurer an amount equal to the sum of liabilities on investment contracts relating to short-term insurance business in accordance with IFRS as reported by that short-term insurer in its audited annual financial statements, and amounts recognised as insurance liabilities, in accordance with IFRS by that short-term insurer in its audited annual financial statements, relating to—”.
- (2) Subsection (1) is deemed to have come into operation on 1 July 2018 and applies in respect of years of assessment ending on or after that date.

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, section 21 of Act 3 of 2008, section 52 of Act 7 of 2010, section 62 of Act 22 of 2012, section 77 of Act 31 of 2013, section 47 of Act 43 of 2014, section 53 of Act 25 of 2015, section 50 of Act 15 of 2016 and section 46 of Act 17 of 2017

50. Section 29A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (15) for the proviso of the following proviso:

“: Provided that the reduction of negative liabilities recognised as an asset must **[only]** apply only where the positive liabilities reduced by the negative liabilities result in a net asset for that fund which is **[disclosed]** recognised for financial reporting purposes.”.

Amendment of section 30C of Act 58 of 1962, as inserted by section 49 of Act 43 of 2014 and amended by section 55 of Act 25 of 2015

51. (1) Section 30C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(d) for item (vi) of the following item:

“(vi) the small business funding entity must **[during any]** within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least 25 per cent of all amounts received or accrued in respect of assets held, other than any amount received or accrued in respect of the disposal of any of those assets, during that year of assessment;”.

(2) Subsection (1) comes into operation on 1 March 2019.

Amendment of section 37D of Act 58 of 1962, as inserted by section 53 of Act 43 of 2014 and amended by section 53 of Act 15 of 2016

52. Section 37D of the Income Tax Act, 1962, is hereby amended—

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

“(b) land in respect of which an endorsement is effected to the title deed of that land that reflects the declaration contemplated in paragraph (a) and has a duration of at least 99 years.”;

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

“There must be allowed to be deducted from the income of any person in respect of declared land, in the year of assessment during which that land becomes declared land and in each subsequent year of assessment, an amount equal to four per cent of the lower of—”; and

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

“(3) If a person retains a right of use of the declared land, the deduction to be allowed in terms of this section must be limited to an amount that bears to the amount determined as contemplated in subsection (2) the same ratio as the market value of the declared land subject to the right of use bears to the market value of the declared land had that declared land not been subject to that right of use.”.

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, sections 32 and 103 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, section 48 of Act 60 of 2008, section 47 of Act 17 of 2009, section 61 of Act 7 of 2010, section 67 of Act 24 of 2011, section 73 of Act 22 of 2012, section 90 of Act 31 of 2013, section 54 of Act 43 of 2014, section 61 of Act 25 of 2015, section 54 of Act 15 of 2016 and section 50 of Act 17 of 2017

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

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

“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, a substitutive share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 22B, 24BA, 25BB(4) and 103, Part IIA of Chapter III and paragraphs 11(1)(g) and 43A of the Eighth Schedule.”; and

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

“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, a substitutive share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections **[22B,]** 24BA, 25BB(4) and 103, Part IIA of Chapter III and **[paragraphs]** paragraph 11(1)(g) **[and 43A]** of the Eighth Schedule.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 18 December 2017.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2019.

Amendment of section 42 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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 33 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, section 48 of Act 17 of 2009, section 62 of Act 7 of 2010, section 68 of Act 24 of 2011, section 74 of Act 22 of 2012, section 91 of Act 31 of 2013, section 55 of Act 43 of 2014, section 62 of Act 25 of 2015 and section 51 of Act 17 of 2017

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

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

“an asset that constitutes an allowance asset in that person’s hands to a company as part of an asset-for-share transaction and that company acquires that asset as an allowance asset or that company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset or an allowance asset—”;

(b) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item:

“(bb) that is to be recovered or recouped by or included in the income of that company [, **other than a company that is a REIT or a controlled company as defined in section 25BB(1),**] in respect of that asset;”;

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

“For the purposes of the definition of ‘contributed tax capital’, if an asset is disposed of by a person to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the definition of ‘asset-for-share transaction’ and that person at the close of the day on which that asset is disposed of holds a qualifying interest in that company as contemplated in paragraph [(a)(iii)] (c) of the definition of ‘qualifying interest’, or is a natural person who will be engaged on a full-time basis in the business of that company or a controlled group company in relation to that company of rendering a service, the amount received by or accrued to the company for the issue of the shares is deemed to be equal to—”; and

(d) by the substitution in subsection (8) for paragraph (B) of the following paragraph:

“(B) where that equity share is held as trading stock, as [**income**] an amount to be included in that person’s income for the year of assessment during which that equity share is disposed of by that person.”.

(2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 18 December 2017.

Amendment of section 44 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010, section 69 of Act 24 of 2011, section 76 of Act 22 of 2012, section 93 of Act 31 of 2013, section 57 of Act 43 of 2014, section 63 of Act 25 of 2015, section 55 of Act 15 of 2016 and section 52 of Act 17 of 2017

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

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

“an asset that constitutes an allowance asset **[in] for** that amalgamated **[company’s hands] company** to a resultant company as part of an amalgamation transaction and that resultant company acquires that asset as an allowance asset or that resultant company is a REIT or a controlled company, as defined in section 25BB (1), that acquires that asset as a capital asset or an allowance asset—”;

(b) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item:

“(bb) that is to be recovered or recouped by or included in the income of that resultant company **[, other than a resultant company that is a REIT or a controlled company, as defined in section 25BB(1),]** in respect of that asset;” and

(c) by the deletion of subsection (9).

(2) Paragraphs (a) and (b) of subsection (1) are deemed of have come into operation on 18 December 2017

Amendment of section 45 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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, section 51 of Act 60 of 2008, section 64 of Act 7 of 2010, section 70 of Act 24 of 2011, section 77 of Act 22 of 2012, section 94 of Act 31 of 2013, section 64 of Act 25 of 2015 and section 53 of Act 17 of 2017

56. Section 45 of the Income Tax Act, 1962, is hereby amended—

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

“an asset that constitutes an allowance asset **[in] for** that transferor **[company’s hands] company** to a transferee company in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ and that transferee company acquires that asset as an allowance asset or that transferee company is a REIT or a controlled company, as defined in section 25BB (1), that acquires that asset as a capital asset or an allowance asset—”; and

- (b) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item:

“(bb) that is to be recovered or recouped by or included in the income of that transferee company in respect of that asset **[other than a transferee company that is a REIT or a controlled company, as defined in section 25BB(1)];**”.

- (2) Subsection (1) is deemed to have come into operation on 18 December 2017.

Amendment of section 47 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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, section 50 of Act 17 of 2009, section 66 of Act 7 of 2010, section 72 of Act 24 of 2011, section 79 of Act 22 of 2012, section 96 of Act 31 of 2013, section 59 of Act 43 of 2012, section 66 of Act 25 of 2015 and section 55 of Act 17 of 2017

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

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

“an asset that constitutes an allowance asset **[in] for** that liquidating **[company’s hands] company** to its holding company in terms of a liquidation distribution and that holding company acquires that asset as an allowance asset or that holding company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset or allowance asset—”; and

- (b) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item:

“(bb) that is to be recovered or recouped by or included in the income of that holding company **[, other than a holding company that is a REIT or a controlled company, as defined in section 25BB(1),]** in respect of that asset; or”;

- (2) Subsection (1) is deemed to have come into operation on 18 December 2017.

Amendment of section 50D of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013, amended by section 71 of Act 25 of 2015 and section 56 of Act 15 of 2016

58. Section 50D of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) at the end of paragraph (c) of the word “or”; by the substitution at the end of paragraph (e) for the full stop of the expression “; or” and by the addition of the following paragraph:

“(e) included in the income of a resident as is attributable to a donation, settlement or other disposition made by a resident as contemplated in section 7(8)(a).”

Amendment of section 64D of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 70 of Act 7 of 2010, section 75 of Act 24 of 2011, section 102 of Act 31 of 2013 and section 73 of Act 25 of 2015

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

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

“‘dividend’ means any dividend or foreign dividend as defined in section 1, including any amount contemplated in section 31(3)(b)(i), that is—”; and

(b) by the deletion in subsection (1) of the definitions of “dividend cycle” and “STC credit”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 64EB of Act 58 of 1962, as inserted by section 85 of Act 22 of 2012, amended by section 103 of Act 31 of 2013, section 69 of Act 43 of 2014 and section 74 of Act 25 of 2015

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

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

“(1) For the purposes of this Part, where—

(a) a person that is contemplated in section 64F(1) acquires the right to a dividend in respect of a share, including a dividend that has not yet been declared or has not yet accrued, by way of cession; and

(b) **[that]** an amount in respect of that dividend [is either announced or declared before that acquisition] is received by or accrues to the person who acquired that right,

the person ceding that right is deemed to be the beneficial owner of that dividend:

Provided that this subsection does not apply to **[any cession]** a dividend in respect of a share if the person to whom those rights are ceded holds, prior to that cession, all the other rights attaching to the share **[after the cession].”;**

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

“holds [borrows] a share in a listed company that was borrowed from another person or acquired in terms of a collateral arrangement entered into with another person;”;

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

“(b) a dividend in respect of that share is received by or accrues to that person;”;

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

“any amount paid by that person to that other person not exceeding that dividend in respect of that **[borrowed]** share is deemed to be a dividend paid by that person for the benefit of that other person.”;

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

“(a) a person that is contemplated in section 64F (1) acquires a share in a listed company (or any right in respect of that share) from another person **[after a dividend is announced or declared in respect of that share]**; and”;

(f) by the deletion in subsection (3) at the end of paragraph (a) of the word “and”; by the substitution for the comma at the end of paragraph (b) of the expression “;and”, and by the addition after paragraph (b) of the following paragraph:

“(c) a dividend in respect of that share is received by or accrues to that person.”.

(2) Subsection (1) comes into operation on 1 January 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by sections 72 and 148 of Act 7 of 2010, section 78 of Act 24 of 2011, section 86 of Act 22 of 2012, section 104 of Act 31 of 2013 and section 75 of Act 25 of 2015

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

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

“Exemption from tax in respect of dividends other than dividends comprising distribution of assets in specie”;

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

“Any dividend is exempt from the dividends tax to the extent that it does not consist of a dividend that comprises a distribution of an asset in specie if the beneficial owner is—;”;

(c) by the deletion in subsection (1) of paragraph (k); and

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

“(2) Any dividend paid by a REIT or a controlled company, as defined in section 25BB, and received or accrued before 1 January 2014 is exempt from the dividends tax to the extent that the dividend does not consist of a dividend that comprises a distribution of an asset in specie.”.

Repeal of section 64J of Act 58 of 1962

62. Section 64J of the Income Tax Act, 1962, is hereby repealed.

Amendment of paragraph 12 of First Schedule to Act 58 of 1962, as amended by section 27 of Act 55 of 1966, section 42 of Act 89 of 1969, section 24 of Act 113 of 1977, section 24 of Act 104 of 1980, section 27 of Act 96 of 1981, section 28 of Act 91 of 1982, section 39 of Act 90 of 1988, section 45 of Act 113 of 1993, section 80 of Act 45 of 2003, section 2 of Act 8 of 2007 and section 57 of Act 60 of 2008

63. Paragraph 12 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) The amount by which the total expenditure incurred by any farmer during any year of assessment in respect of the matters referred to in items (c) to [(j)] (i), inclusive, of subparagraph (1) exceeds the taxable income (as calculated before allowing the deduction of such expenditure and before the inclusion as hereinafter provided of the said amount in the farmer’s income) derived by him from farming operations during that year of assessment shall be included in his income from such operations for that year and be carried forward and be deemed for the purposes of

subparagraph (1) to be expenditure which has been incurred by him during the next succeeding year of assessment in respect of the matters referred to in the said items.”.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009 and amended by section 84 of Act 7 of 2010, section 92 of Act 24 of 2011, section 99 of Act 22 of 2012, section 113 of Act 31 of 2013, section 87 of Act 25 of 2015 and section 64 of Act 17 of 2017

64. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(a)(i) for sub-subitem (*dd*) of the following sub item:

“(*dd*) provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and”;

(b) by the substitution in subparagraph (1)(a)(ii) for sub-subitem (*dd*) of the following sub item:

“(*dd*) provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and”; and

(c) by the substitution in subparagraph (1)(b)(v) for sub-subitem (*bb*) of the following sub-item:

“(*bb*) transferred into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund directly from a fund contemplated in subitem (*aa*) for the person’s benefit, less the amount represented by symbol A when applying that formula.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2018.

Amendment of paragraph 6A to Second Schedule to Act 58 of 1962, as added by section 65 of Act 17 of 2017

65. (1) Paragraph 6A of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraphs (a) and (b) of the following subparagraphs respectively:

“(a) pension fund into a pension preservation fund or a retirement annuity fund; or

(b) provident fund into a pension preservation fund, provident preservation fund or a retirement annuity fund[,]”; and

(b) by the deletion of the words following subparagraph (b).

(2) Subsection (1) is comes into operation on 1 March 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 18 of Act 18 of 2009, section 94 of Act 24 of 2011, section 19 of Act 21 of 2012, section 13 of Act 26 of 2013, section 8 of Act 39 of 2013, section 68 of Act 44 of 2014 and section 6 of Act 16 of 2016

66. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (4) for item (bA) of the following item:

“(bA) any contribution made or amount paid by the employer to any retirement annuity fund on behalf of or for the benefit of the employee, but limited to the deduction to which the employee is entitled under section 11F having regard to the remuneration and the period in respect of which it is payable;”.

Amendment of paragraph 1 of Sixth Schedule to Act 58 of 1962, as amended by section 85 of Act 7 of 2010, section 88 of Act 25 of 2015 and section 64 of Act 15 of 2016

67. Paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) in the definition of “investment income” for paragraph (i) of the following paragraph:

“(i) any income in the form of annuities, dividends, foreign dividends, interest, rental derived in respect of immovable property, royalties, or income of a similar nature; and”.

Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as inserted by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990, section 49 of Act 28 of 1997, section 54 of Act 30 of 1998, section 50 of Act 32 of 2004, section 55 of Act 31 of 2005, section 64 of Act 17 of 2009, section 102 of

Act 24 of 2011, section 100 of Act 22 of 2012, section 118 of Act 31 of 2013 and section 94 of Act 25 of 2015

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

(a) by the substitution for subparagraph (l) of the following paragraph and proviso:

“(l) the employer has made any contribution for the benefit or on behalf of any employee to any pension fund, provident fund or retirement annuity fund; Provided that this subparagraph shall not apply to the transfer of any surplus as contemplated in section 15E(1)(b) of the Pension Funds Act.”; and

(b) by the deletion at the end of paragraph (k) of the word “or”; by the substitution after subparagraph (l) for the full stop of the expression “or ;” and by the addition of the following subparagraph:

“(m) the employer has made any contribution for the benefit of any employee to any bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), other than any payment in respect of a pension fund or provident fund.”.

(2) Paragraph (a) of subsection is deemed to have come into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 11 of Seventh Schedule to Act 58 of 1962, as amended by section 33 of Act 96 of 1985, section 35 of Act 65 of 1986, section 48 of Act 21 of 1995, section 2 of Act 8 of 2007, section 1 of Act 3 of 2008, and section 98 of Act 25 of Act 2015

69. (1) Paragraph 11 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (4) after item (b) for the full stop of a semi-colon and the addition of the following item:

“(c) a debt owed to his or her employer in consequence of a loan by that employer to that employee as does not exceed the amount of R 450 000 if—

(i) the debt was assumed for the purposes of acquiring immovable property by the employee;

- (ii) the market value of the immovable property acquired does not exceed R 450 000 in relation to the year of assessment during which the property is acquired; and
- (iii) the remuneration proxy of the employee does not exceed R250 000 in relation to the year of assessment during which the loan is granted;”.

(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 12D of Seventh Schedule to Act 58 of 1962, as substituted by section 77 of Act 43 of 2014 and amended by section 101 of Act 25 of 2015, section 69 of Act 15 of 2016 and section 69 of Act 17 of 2017

70. (1) Paragraph 12D of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (4) of the word “or” at the end of item (b) and the addition of the following items:

- “(c) where an error occurred in calculating the fund member category factor contemplated in subparagraph (5)(a), a corrected contribution certificate must be supplied to the employer by no later than one month after the day that the error was discovered or should reasonably have been discovered, and that revised certificate will have effect from the first day of the relevant year of assessment to which that certificate applies; or
- (d) where the fund member category factor changed during the year of assessment, the contribution certificate must be supplied to the employer no later than one month after the day on which those changes become effective.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

Insertion of paragraph 12E in Seventh Schedule to Act 58 of 1962

71. (1) The following paragraph is hereby inserted in the Seventh Schedule to the Income Tax Act, 1962, after paragraph 12D:

“Contribution to bargaining council

“12E. (1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(m) is the amount of any contribution or payment made by the employer in respect of a year of assessment, directly or indirectly, to any bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) Where an appropriate portion of any expenditure contemplated in subparagraph (1) cannot be attributed to the employee for whose benefit the amount is paid, the amount of that expenditure in relation to that employee is deemed, for the purposes of subparagraph (1), to be an amount equal to the total expenditure incurred by the employer during that year of assessment for the benefit of all employees divided by the number of employees in respect of whom the expenditure is incurred.”.

(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as amended by section 65 of Act 60 of 2001, section 63 of Act 74 of 2002, section 90 of Act 45 of 2003, section 25 of Act 16 of 2004, section 51 of Act 32 of 2004, section 63 of Act 31 of 2005, section 49 of Act 3 of 2008, section 102 of Act 22 of 2012 and section 78 of Act 43 of 2014

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

(a) by the substitution for the definition of “disposal” of the following definition:

“**‘disposal’** means an event, act, forbearance or operation of law envisaged in paragraph 11 or an event, act, forbearance or operation of law which is in terms of this [Schedule] Act treated as the disposal of an asset, and **‘dispose’** must be construed accordingly;” and

(b) by the insertion after the definition of “insurer” of the following definition:

“**‘market value’** means market value as defined in paragraph 31;”.

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, section 64 of Act 31 of 2005, section 93 of Act 7 of 2010 and section 102 of Act 25 of 2015

73. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (a) of the following item:

“(a) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property held [**otherwise than as trading stock**]; and”.

Amendment of paragraph 5 of Eighth Schedule to Act 58 of 1962, as amended by section 32 of Act 9 of 2006, section 2 of Act 8 of 2007, section 1 of Act 3 of 2008, section 67 of Act 17 of 2009, section 107 of Act 24 of 2011 and section 8 of Act 13 of 2012

74. Paragraph 5 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (2) of the following subparagraph:

“(3)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act that, with effect from a date or dates mentioned in that announcement, the annual exclusion of the person mentioned in subparagraph (1) or (2) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in item (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

Amendment of paragraph 10 of Eight Schedule to Act 58 of 1962, as amended by section 66 of Act 74 of 2002, section 9 of Act 13 of 2012, section 105 of Act 22 of 2012, section 79 of Act 43 of 2012 and section 12 of Act 13 of 2016

75. Paragraph 10 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) A person’s taxable capital gain for the year of assessment is—”; and

(b) by the addition of the following subparagraph:

“(2)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act that, with effect from a date or dates mentioned in that announcement, the percentage used in determining a person’s taxable capital gain for the year of assessment under subparagraph (1) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in item (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

Amendment of paragraph 12A of Eighth Schedule to Act 58 of 1962, as substituted by section 70 of Act 17 of 2017

76. Paragraph 12A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the definition of “concession or compromise” of the following definition:

“‘concession or compromise’ means any arrangement in terms of which—

(a) a debt is—

(i) cancelled, waived or remitted; or

(ii) extinguished by—

(aa) redemption of the claim in respect of that debt; or

(bb) merger by reason of the acquisition of the claim in respect of that debt,

by the person owing that debt or a person who is a connected person in relation to that person otherwise than as the result or by reason of the implementation of an arrangement described in paragraph (b);

(b) an interest-bearing debt owed by a company to a person is settled, directly or indirectly,—

(i) by being converted to or exchanged for shares in that company; or

(ii) by applying the proceeds from shares issued by that company, where that company is, immediately after that arrangement, a connected person in relation to the person that acquired the shares by reason or in consequence of that arrangement;”;

(b) by the substitution in subparagraph (1) for the definition of “debt benefit” of the following definition:

“‘debt benefit’, in respect of a debt owed by a person to another person, means

- (a) in the case of an arrangement described in paragraph (a)(i) of the definition of ‘concession or compromise’, the amount cancelled, waived or remitted;
- (b) in the case of an arrangement described in paragraph (a)(ii) of the definition of ‘concession or compromise’, the amount by which the face value of the claim in respect of the debt held by the person to whom the debt is owed prior to the entering into of that arrangement exceeds the expenditure incurred in respect of—
- (i) the redemption of that debt; or
 - (ii) the acquisition of the claim in respect of that debt;
- (c) in the case of an arrangement described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement did not hold a direct or an indirect interest in that company prior to entering into that arrangement, the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds the market value of the shares held or acquired by reason or as a result of the implementation of that arrangement; or
- (d) in the case of an arrangement described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement held—
- (i) a direct interest or an indirect interest in that company; or
 - (ii) a direct interest as well as an indirect interest in that company prior to the entering into of that arrangement,
- the amount by which the face value of the claim held in respect of that debt prior to the entering into of that arrangement exceeds the amount by which the market value of the effective interest in that company by virtue of any direct interest or indirect interest held by that person immediately after the implementation of that arrangement exceeds, solely as a result of the implementation of that arrangement, the market value of the effective interest in that company by virtue of any direct interest or indirect interest held by that person immediately prior to the entering into of that arrangement;”;

- (c) by the insertion in subparagraph (1) after the definition of “debt benefit” of the following definition:

“‘direct interest’ means the holding, by a person, of shares in a company;”;

- (d) by the addition in subparagraph (1) after the definition of “group of companies” of the following definitions:

“‘indirect interest’ means the holding, by a person, of an interest in a company by way of holding shares in another company that holds shares in that company;

‘interest-bearing debt’ means any debt—

(a) in respect of which any interest, as defined in section 24J, has been or is to be incurred; or

(b) substituted, directly or indirectly, for any debt described in paragraph (a);
and

‘market value’ in relation to shares acquired or held by reason or as a result of implementing a concession or compromise in respect of a debt means the market value of those shares immediately after the implementation of that concession or compromise.”

- (e) by the substitution in subparagraph (2) for item (a) of the following item:

“(a) a debt benefit in respect of a debt owed by a person arises in respect of a year of assessment by reason or as a result of a concession or compromise in respect of that debt during that year of assessment; and”;

- (f) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) the amount of that debt was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an asset (other than an allowance asset) that is[—

(i)] held by that person at the time the debt benefit arises and subparagraph (3) has been applied to reduce any expenditure in respect of that asset to the full extent of that expenditure [; or]

[(ii) no longer held by that person at the time the debt benefit arises],”;

- (g) by the insertion after subparagraph (4) of the following subparagraph:

“(4A) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subparagraph (2); and

(b) the amount of that debt was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an allowance asset that was disposed of in a prior year of assessment, that person must if the amount determined in respect of that disposal as—

(i) a capital gain; or

(ii) a capital loss

differs from the amount that would have been determined, whether as a capital gain or a capital loss, in respect of that disposal had that debt benefit been taken into account in the year of disposal of that asset, treat the amount of that difference as a capital gain to be taken into account in respect of that year of assessment.”; and

(h) by the substitution in subparagraph (6) for item (b) of the following item:

“(b) to the extent that the debt is reduced by way of—

(i) donation as defined in section 55 (1); or

(ii) any transaction to which section 58 applies[;],
in respect of which donations tax is payable;”.

(2) Paragraphs (a) to (d) of subsection (1) are deemed to have come into operation on 1 January 2018 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraphs (e) and (h) of subsection 1 come into operation on 1 January 2019 and apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 35 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 86 of Act 60 of 2001, section 133 of Act 31 of 2013 and section 111 of Act 25 of 2015

77. Paragraph 35 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subsection (1A).

Amendment of paragraph 39 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 88 of Act 60 of 2001, section 100 of Act 45 of 2003, section 26 of Act 16 of 2004 and section 73 of Act 31 of 2015

78. Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (4) of the following subparagraph:

“(5) For the purposes of subparagraph (1), where a company redeems its shares, the holder of those shares must be treated as having disposed of them to that company.”.

Amendment of paragraph 43A of Eighth Schedule to Act 58 of 1962, as substituted by section 72 of Act 17 of 2017

79. (1) Paragraph 43A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the definition of “equity share” of the following words:

“For purposes of this **[section]** paragraph—”;

(b) by the insertion in subparagraph (1) before the definition of “exempt dividend of the following definition:

“**“deferral transaction’** means a transaction in respect of which the provisions of PART III of this Chapter were applied;”;

(c) by the substitution in subparagraph (1) for paragraph (a) of the definition of “extraordinary dividend” of the following paragraph:

“(a) a preference share, so much of the amount of any dividend received or accrued in respect of that share as exceeds the amount that would have accrued in respect of that share had it been determined with reference to the consideration for which that share was issued by applying an interest rate of 15 per cent per annum for the period in respect of which that dividend was received or accrued;”;

(d) by the insertion in subparagraph (1) after the definition of “extraordinary dividend” of the following definition:

“**“preference share’** means a preference share as defined in section 8EA(1); and”

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

“Subject to subparagraph (3), where a company disposes of shares in another company in terms of a transaction that is not a deferral transaction and that company held a qualifying interest in that other company at any time during the period of 18 months prior to that disposal, the amount of any exempt dividend received by or that accrued to that company in respect of the shares disposed of must—”; and

(f) by the addition after subparagraph (2) of the following subparagraph:

“(3) Where a company disposes of shares in terms of a transaction that is not a deferral transaction within a period of 18 months after having acquired those shares in terms of a deferral transaction and—

- (a) within a period of 18 months prior to the acquisition of those shares by that company an exempt dividend in respect of those shares accrued to or was received by a person that—
- (i) disposed of those shares in terms of a deferral transaction; and
 - (ii) was a connected person in relation to that company at any time within that period or immediately after that disposal,
- that dividend must for purposes of this paragraph be treated as a dividend that accrued to or was received by that company in respect of those shares within the period during which that company held those shares; and
- (b) if those shares (hereinafter referred to as ‘new shares’) were acquired in terms of that deferral transaction in return for or by virtue of the holding, by that company, of other shares (hereinafter referred to as ‘old shares’) that were disposed of in terms of that deferral transaction—
- (i) an exempt dividend in respect of the old shares, other than a dividend consisting of new shares, that accrued to or was received by that company within a period of 18 months prior to the disposal of the old shares must for purposes of this paragraph be treated as an amount that accrued to or was received by that company as an exempt dividend in respect of the new shares within the period during which that company held the new shares; and
 - (ii) if an exempt dividend—
 - (aa) other than an exempt dividend consisting of new shares, accrued to or was received by that company in respect of the old shares within a period of 18 months prior to the disposal of the old shares; or
 - (bb) that accrued to or was received by that company as an exempt dividend in respect of the new shares was derived, directly or indirectly, from an amount that accrued to or was received by the person to whom the old shares were disposed of, within a period of 18 months after the disposal of the old shares to that person, as an exempt dividend in respect of the old shares,
- and an amount of that exempt dividend in respect of the old shares would have constituted an extraordinary dividend in respect of which subparagraph (2) would have applied had the person who received or to whom that dividend

accrued disposed of those old shares at their market value, after receipt of that exempt dividend, in terms of a transaction that is not a deferral transaction, the higher of—

- (A) the amount, if any, that would have constituted an extraordinary dividend in respect of the old shares; and
- (B) the amount constituting an extraordinary dividend in respect of the new shares, as determined with reference to the aggregate of the amount that accrued to or was received by that company as an exempt dividend in respect of the new shares and the amount that is treated as having accrued to or been received by that company as an exempt dividend in respect of the new shares,

must for purposes of subparagraph (2) be treated as an extraordinary dividend that accrued to or was received by that company in respect of the new shares.”.

(2) Paragraphs (b), (e) and (f) of subsection (1) come into operation on 1 January 2019 and apply in respect of disposals on or after that date.

(3) Paragraphs (c) and (d) of subsection (1) are deemed to have come into operation on 19 July 2017 and apply in respect of disposals on or after that date.

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, section 73 of Act 17 of 2009, section 103 of Act 7 of 2010 and section 10 of Act 13 of 2012

80. Paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (1) of the following subparagraph:

“(1A)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the amount of the capital gain or capital loss determined in terms of subparagraph (1)(a) or the amount of the capital gain determined in terms of subparagraph (1)(b) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that

announcement within that period of 12 months.”.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as amended by section 31 of Act 19 of 2001, section 98 of Act 60 of 2001, section 87 of Act 74 of 2002, section 102 of Act 45 of 2003, section 76 of Act 31 of 2005, section 57 of Act 3 of 2008, section 114 of Act 24 of 2011, section 115 of Act 25 of 2015 and section 73 of Act 17 of 2017

81. Paragraph 55 of Eighth Schedule to the Income Tax Act, 1962, is hereby amended the substitution in paragraph (1)(c) for the words preceding subitem (i) of the following words:

“in respect of a policy that was taken out to insure against the death, disability or illness of that person by any other person who was a partner of that person, or held any shares or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that other person to acquire, upon the death, disability or [severe] illness of that person, the whole or part of—”.

Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962, as amended by section 89 of Act 74 of 2002, section 34 of Act 9 of 2006, section 115 of Act 24 of 2011 and section 11 of Act 13 of 2013

82. Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

“(7)(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the sum of the amounts referred to in subparagraph (3) or the total market value of all assets referred to subparagraph (6) will be altered to the extent mentioned in the announcement.

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates determined by the Minister in that announcement and continues to apply for a period of 12 months from that date or those dates subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as substituted by section 123 of Act 22 of 2012 and amended by section 144 of Act 31 of 2013 and section 117 of Act 25 of 2017

83. Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3)(c)(ii) for sub-subitem (*bb*) of the following sub-subitem:

- “(*bb*) by means of a distribution by a company, unless the full amount of that distribution[—
- (A) was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or
- (B)] was included in the income of a holder of shares in that company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; and”.

Repeal of paragraph 67 of Eighth Schedule to Act 58 of 1962

84. Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby repealed.

Substitution of paragraph 72 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 94 of Act 54 of 2002, section 112 of Act 45 of 2003 and section 80 of Act 31 of 2005

85. (1) The following paragraph is hereby substituted for paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962:

“Attribution of capital gain and other amounts vesting in person that is not resident.

72. (1) This paragraph applies where—

- (a) a resident has made a donation, settlement or other disposition to any person (other than an entity, which is not resident and which is similar to a public benefit organisation contemplated in section 30);**

(b) a capital gain (including any amount that would have constituted a capital gain had that person been a resident) attributable to that donation, settlement or other disposition has arisen during a year of assessment; and

(c) an amount consisting of or derived, directly or indirectly, from—

(i) that capital gain; or

(ii) the amount that would have constituted a capital gain, has during that year vested in or is treated as having vested in any person who is not a resident (other than a controlled foreign company, in relation to that resident).

(2) In determining, for purposes of subparagraph (1), whether an amount would have constituted a capital gain had a person been a resident, the provisions of paragraph 64B(1) and (4) must be disregarded.

(3) An amount that is equal to so much of the amount described in item (c) of subparagraph (1) that has vested in or is treated as having vested in the person who is not a resident as consists of or is derived, directly or indirectly, from—

(a) the capital gain must be disregarded when determining the aggregate capital gain or aggregate capital loss of that person; and

(b) the capital gain or the amount that would have constituted a capital gain must be taken into account as a capital gain when determining the aggregate capital gain or aggregate capital loss of the resident who made the donation, settlement or other disposition described in subparagraph (1).”.

(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of amounts vesting on or after that date.

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 108 of Act 60 of 2001, section 58 of Act 20 of 2006, section 62 of Act 3 of 2008, section 86 of Act 60 of 2008, section 80 of Act 17 of 2009, section 150 of Act 31 of 2013, section 123 of Act 25 of 2015 and section 75 of Act 17 of 2017

86. (1) The following paragraph is hereby substituted for paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962:

“Capital gain attributed to beneficiary.

80. (1) Subject to paragraphs 68, 69 and 71 **[and 72]**, where a trust vests an asset in a beneficiary of that trust (other than any person contemplated in paragraph 62(a) to (e) or a person who acquires that asset as an equity instrument as contemplated in section 8C(1)) who is a resident and determines a capital gain in respect of that disposal or, if that trust is not a resident, would have determined a capital gain, in respect of **[the vesting by a trust of an asset in a trust beneficiary, that gain]** that disposal had it been a resident—

- (a) that capital gain must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and
- (b) that capital gain or the amount that would have been determined as a capital gain must be taken into account as a capital gain for the purpose of calculating the aggregate capital gain or aggregate capital loss of the beneficiary to whom that asset was so disposed of.

(2) Subject to paragraphs 64E, 68, 69 and 71, where a trust determines a capital gain (or, if that trust is not a resident, would have determined a capital gain had it been a resident) in respect of the disposal of an asset **[by a trust]** in a year of assessment during which a **[trust]** beneficiary of that trust (other than any person contemplated in paragraph 62(a) to (e)) who is a resident has a vested right or acquires a vested right (including a right created by the exercise of a discretion) to an amount derived, directly or indirectly, from that capital gain or from the amount that would have been determined as a capital gain had that trust been a resident but not to the asset disposed of, **[the disposal of which gave rise to the capital gain,]** an amount that is equal to so much of **[the capital gain as is equal to]** the amount to which that **[trust]** beneficiary of that trust is entitled in terms of that right as consists of or is derived, directly or indirectly, from—

- (a) that capital gain must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and
- (b) that capital gain or the amount that would have been determined as a capital gain must be taken into account as a capital gain for the purpose of calculating the aggregate capital gain or aggregate capital loss of **[the] that beneficiary [who is entitled to that amount]**.

(3) Where during any year of assessment any resident acquires a vested right to any amount representing capital of any trust which is not a resident, and—

- (a) that capital [**arose**] consists of or is derived, directly or indirectly, from an amount—
- (i) determined as a capital gain of that trust; or
 - (ii) [**any amount**] which would have [**constituted**] been determined as a capital gain of that trust had that trust been a resident, [**determined**] in any previous year of assessment during which that resident had a contingent right to that capital; and
- (b) that capital gain or the amount that would have been determined as capital gain has not been subject to tax in the Republic in terms of the provisions of this Act, that amount must be taken into account as a capital gain when determining the aggregate capital gain or aggregate capital loss of that resident in respect of the year of assessment in which that resident acquired that vested right.

(4) In determining, for purposes of subparagraphs (1), (2) or (3), whether an amount would have constituted a capital gain had the trust been a resident, the provisions of paragraph 64B(1) and (4) must be disregarded.”.

(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of disposals on or after that date.

Continuation of certain amendments of Schedules to Act 91 of 1964

87. Every amendment or withdrawal of or insertion in Schedules 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 September 2017 up to and including 30 September 2018, shall not lapse by virtue of section 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998, section 82 of Act 53 of 1999, section 149 of Act 60 of 2001, section 115 of Act 74 of 2002, section 44 of Act 16 of 2004, section 93 of Act 32 of 2004, section 41 of Act 9 of 2006 and section 130 of Act 24 of 2011

88. Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the addition in subsection (1) after paragraph (n) of the following paragraph:

“(o) the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency;”.

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, section 86 of Act 20 of 2006, section 140 of Act 24 of 2011 and section 177 of Act 31 of 2013

89. (1) Section 22 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (6) of the following subsection:

“(7) For purposes of this section, ‘face value’ in relation to the transfer of an account receivable by a vendor to any other person, means the net value of the account receivable at the time of transfer less adjustments made for debit and credit notes and bad debts already written off by the vendor;”.

(2) Subsection (1) comes into operation on 1 April 2019.

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998, section 94 of Act 53 of 1999, section 40 of Act 34 of 2004, section 10 of Act 10 of 2005, section 271 of Act 28 of 2011, read with item 118 of Schedule 1 to that Act and section 21 of Act 39 of 2013

90. (1) Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of paragraph (*dA*).

(2) Subsection (1) comes into operation on 1 April 2019.

Amendment of section 41 of Act 89 of 1991, as amended by section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997, section 98 of Act 30 of 1998, section 167 of Act 60 of 2001, section 40 of Act 32 of 2005, section 39 of Act 21 of 2006, section 16 of Act 9 of 2007 and section 28 of Act 23 of 2015

91. (1) Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph (*a*) of the following words:

“Notwithstanding anything to the contrary in this Act (other than the provisions of section [41A or] 41B)”.

(2) Subsection (1) comes into operation on 1 April 2019.

Special exemption in respect of goods or services supplied by International Telecommunication Union

92. (1) The supply of any goods or services by the International Telecommunication Union in connection with “Telecom World 2018 exhibition” shall be exempt from value-added tax imposed in terms of section 7(1)(a) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

(2) Subsection (1) is deemed to have come into operation on 1 September 2018.

Amendment of section 8 of Act 15 of 2007

93. Section 8 of the Diamond Export Levy Act, 2007, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the sum of the producer’s total gross sales described in section 11(1)(b) during those assessment periods described in paragraph (a) do not exceed **[R3 billion]** USD 325 million.”.

Amendment of section 9 of Act 15 of 2007

94. Section 9 of the Diamond Export Levy Act, 2007, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) the sum of a producer’s total gross sales described in section 11(1)(b) during the assessment period and the immediately preceding assessment period do not exceed **[R20 million]** USD 2.2 million.”.

Amendment of section 6 of Act 28 of 2008, as amended by section 99 of Act 17 of 2009 and section 133 of Act 7 of 2010

95. (1) Section 6 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

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

“(c) as mentioned in paragraph **[(b) or]** (c) of the definition of ‘transfer’ in section 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 1 for that mineral resource in terms of a transaction entered into at arm's length.”;

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

“(c) as mentioned in paragraph [(b) or] (c) of the definition of ‘transfer’ in section 1 is the amount that would have been received or accrued during the year of assessment in respect of the transfer of that mineral resource had that mineral resource been transferred in the condition specified in Schedule 2 for that mineral resource in terms of a transaction entered into at arm's length.”; and
 (c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) For purposes of subsection (2), gross sales is determined without regard to any [**expenditure incurred**] amount received or accrued in respect of transport, insurance and handling of an unrefined mineral resource after that mineral resource was brought to the condition specified in Schedule 2 for that mineral resource or any [**expenditure incurred**] amount received or accrued in respect of transport, insurance and handling to effect the disposal of that mineral resource.”.

(2) Subsection (1) comes into operation on 1 January 2019 and applies in respect of a tax period commencing on or after that date.

Amendment of section 6A of Act 28 of 2008, as inserted by section 134 of Act 7 of 2010 and substituted by section 185 of Act 31 of 2013

96. Section 6A of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

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

“(b) is transferred [**at**] in a condition beyond the condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been transferred [**at**] in the higher of the condition specified for that mineral resource or the condition in which that mineral resource was extracted.”;

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

“(a) [**at**] in a condition below the minimum of the range of conditions specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the minimum of the range of conditions specified for that mineral resource;”;

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

“(c) [**at**] in a condition above the maximum range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at the maximum of the range of conditions specified for that mineral resource.”.

Substitution of section 8 of Act 28 of 2008

97. The following section is hereby substituted for section 8 of the Mineral and Petroleum Resources Royalty Act, 2008:

“Exemption for sampling

8. An extractor is exempt from the royalty imposed in respect of mineral resources won or recovered by the extractor for purposes of testing, identification, analysis and sampling mentioned in section 20 of the Mineral and Petroleum Resources Development Act pursuant to a prospecting right or an exploration right as defined in section 1 of that Act if the gross sales in respect of those mineral resources **[does] do** not exceed R100 000 during a year of assessment.”.

Amendment of section 13 of Act 31 of 2013, as amended by section 144 of Act 25 of 2015, section 98 of Act 15 of 2016 and section 93 of Act 17 of 2017

98. (1) Section 13 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2020 and applies in respect of amounts incurred on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 12 December 2013.

Amendment of section 15 of Act 31 of 2013, as amended by section 145 of Act 25 of 2015, section 99 of Act 15 of 2016 and section 94 of Act 17 of 2017

99. (1) Section 15 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2020 and applies in respect of amounts incurred on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 12 December 2013.

Substitution of section 12 of Act 26 of 2013

100. The following section is hereby substituted for section 12 of the Employment Tax Incentive Act, 2013:

“Cessation of employment tax incentive

12. An employer may not receive the employment tax incentive after **[28 February 2019] 29 February 2024.**”.

Amendment of section 3 of Act 25 of 2015

101. (1) Section 3 of the Taxation Laws Amendment Act, 2015, is hereby amended—

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

“(f) by the substitution in subsection (1) in the definition of ‘connected person’ in paragraph (d)(vi) for item (bb) of the following item:

‘**[(vi)] (bb)** any relative of such member or any trust (other than a portfolio of a collective investment scheme **[in securities or a portfolio of a collective investment scheme in property]**) which is a connected person in relation to such member; and’;”.

(b) by the deletion in subsection (1) of paragraph (i); and

(c) by the deletion of subsection (5).

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 13 of Act 25 of 2015

102. (1) Section 13 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) **[comes] is deemed to have come** into operation **[on the date on which the Insurance Act, 2016, comes into operation] 1 July 2018.**”

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 16 of Act 25 of 2015

103. (1) Section 16 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution in the Afrikaans text in subsection (1) for paragraph (f) of the following paragraph:

“(f) deur in subartikel (1) in paragraaf (k) in paragraaf (hh) van die voorbehoudsbepaling subparagraaf (B) deur die volgende subparagraaf te vervang:

“(B) die bedrag van daardie uitgawes of vermindering [**bepaal word**] direk of indirek met verwysing na die dividend ten opsigte van ’n identiese aandeel [**van dieselfde soort en van dieselfde of gelykstaande kwaliteit**] as daardie aandeel bepaal word:”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 18 of Act 25 of 2015

104. Section 18 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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

‘save as provided in paragraph 12(2) of the First Schedule, such sum as [**the Commissioner may think just and reasonable as representing**] represents 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(1), 12U 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 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, which amount must be determined on the basis of the periods of use listed for this purpose in a public notice issued by the Commissioner, or a shorter period of use approved by the Commissioner on application in the prescribed form and manner by the taxpayer:’;”.

Amendment of section 52 of Act 25 of 2015

105. (1) Section 52 of the Taxation Laws Amendment Act, 2015, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a), (b) and (c) respectively; and
 (b) by the substitution for subsections (2) and (3) of the following subsections respectively:

“(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on the date on which an insurer qualifies as a micro-insurer as defined in the Insurance Act[, 2016,] in terms of that Act and apply to years of assessment ending on or after that date.

(3) Paragraphs (d) and (e) of subsection (1) **[comes]** are deemed to have come into operation **[on the date on which the Insurance Act, 2016, comes into operation]** 1 July 2018 and apply to years of assessment ending on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 53 of Act 25 of 2015

106. (1) Section 53 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Paragraphs (a) and (c) of subsection (1) **[comes]** are deemed to have come into operation **[on the date on which the Insurance Act, 2016, comes into operation]** 1 July 2018 and apply in respect of years of assessment ending on or after that date.”

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Repeal of section 78 of Act 25 of 2015

107. (1) Section 78 of the Taxation Laws Amendment Act, 2015 is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 29 of Act 15 of 2016

108. (1) Section 29 of the Taxation Laws Amendment Act, 2016, is hereby amended by the substitution for subsection (2) of the following subsection

“(2) Subsection (1) [**comes**] is deemed to have come into operation [on the date on which the Insurance Act, 2016, comes into operation] 1 July 2018 and applies in respect of years of assessment ending on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 19 January 2017.

Amendment of section 50 of Act 15 of 2016

109. (1) Section 50 of the Taxation Laws Amendment Act, 2016, is hereby amended—

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

“(h) by the addition of the following subsections:

‘(14) The amount referred to in the definition of adjusted IFRS value in respect of the phasing-in amount is in respect of—

(a) the first year of assessment ending on or after 1 July 2018, which will be 83.3 per cent of the phasing-in amount;

(b) the second year of assessment ending on or after 1 July 2018, which will be 66.7 per cent of the phasing-in amount;

(c) the third year of assessment ending on or after 1 July 2018, which will be 50 per cent of the phasing-in amount;

(d) the fourth year of assessment ending on or after 1 July 2018, which will be 33.3 per cent of the phasing-in amount; and

(e) the fifth year of assessment ending on or after 1 July 2018, which will be 16.7 per cent of the phasing-in amount.

(15) For the purposes of subsection (14) ‘phasing-in amount’ in relation to a policyholder fund or the risk policy fund means—

(a) if the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund, reduced by negative liabilities recognised as an asset (adjusted to the manner of disclosure of policy liabilities and assets in the audited annual financial statements for 2015), exceeds the amount of negative liabilities that has been recognised in determining the value of liabilities (adjusted to the manner of disclosure of policy liabilities for tax purposes for 2015 years of assessment) relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2016, the amount of that excess; or

(b) if the amount of negative liabilities that has been recognised in determining the value of liabilities (adjusted to the manner of disclosure of policy liabilities for tax purposes for 2015 years of assessment) relating to policies allocated to that fund exceeds the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2016, reduced by negative liabilities recognised as an asset (adjusted to the manner of disclosure of policy liabilities and assets in the audited annual financial statements for 2015), the amount of that excess.

(16) For purposes of this section, other than for the purposes of subsection (15), ‘asset’ excludes—

(a) negative liabilities;

(b) policies of reinsurance;

(c) a deferred tax asset; or

(d) goodwill,

recognised as an asset in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements.’’. and

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

(2) Paragraphs (a) and (h) of subsection (1) [**come**] are deemed to have come into operation on [the date on which the Insurance Act, 2016, comes into operation] 1 July 2018 and apply in respect of years of assessment ending on or after that date.

(2) Subsection (1) is deemed to have come into operation on 19 January 2017.

Amendment of section 46 of Act 17 of 2017

110. (1) Section 46 of the Taxation Laws Amendment Act, 2017, is hereby amended—

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

“(2) Paragraphs (a), (b), (e) and (f) of subsection (1) [**come**] are deemed to have come into operation on [the date on which the Insurance Act, 2016, comes into operation] 1 July 2018 and apply in respect of years of assessment ending on or after that date.”; and

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

“(3) Paragraph (c) of subsection (1) [**comes**] is deemed to have come into operation on 1 January [**2018**] 2016 and applies in respect of years of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 18 December 2017.

Amendment of section 105 of Act 17 of 2017

111. (1) Section 105 of the Taxation Laws Amendment Act, 2017, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The exemption contemplated in section [**96**] 101 and the bargaining council levy contemplated in section [**101**] 103 do not apply in respect of any amount to the extent that tax in respect of that amount was—”.

(2) Subsection (1) is deemed to have come into operation on 18 December 2017.

Short title

112. This Act is called the Taxation Laws Amendment Act, 2018.