

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL

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

(MINISTER OF FINANCE)

[B 42—2007]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Transfer Duty Act, 1949, so as to further regulate the payment of duty; to further regulate exemptions from duty; to amend the Pension Funds Act, 1956, so as to delete an obsolete word and to further provide for deductions from retirement fund interests; to amend the Income Tax Act, 1962, so as to amend certain definitions; to insert certain definitions; to provide for further definitions; to further regulate the payment of normal tax; to further regulate certain inclusions in income; to further regulate exemptions; to further regulate deductions; to further regulate assessed losses; to further regulate a withholding tax; to further regulate certain company restructuring transactions; to determine certain rates; to further regulate the determination of capital gains and capital losses; to further regulate the payment of normal tax; to repeal obsolete provisions and to effect textual and consequential amendments; to amend the Customs and Excise Act, 1964, so as to amend certain definitions; to substitute obsolete references to provisions in respect of customs union agreements; to insert provisions regarding the collection of air passenger tax by the operator or his or her agent and circumstances in which liability will cease; to amend provisions regarding the value for duty purposes of imported goods; to effect amendments to the provisions regarding the value for excise duty purposes of goods manufactured in the Republic; to effect consequential amendments in respect of the amendment of the definition of “excise duty” and certain contextual amendments to the provisions authorising rebates and refunds of duty in terms of the Schedules to the Act; to delete references to a fine in certain provisions; to amend the Stamp Duties Act, 1968, so as to delete certain obsolete provisions; to amend the Value-Added Tax Act, 1991, so as to amend certain definitions; to further regulate zero-rated supplies; to further regulate the deduction of input tax; to effect certain textual and consequential amendments; to amend the Uncertificated Securities Tax Act, 1998, so as effect a consequential amendment; to amend the Collective Investment Schemes Control Act, 2002, so as to effect a consequential amendment; to amend the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, so as to delete an obsolete provision; to amend the Revenue Laws Amendment Act, 2006, so as to amend an effective date; to amend the Taxation Laws Amendment Act, 2007, so as to effect textual amendments and to repeal certain provisions; to provide for the zero rating of certain supplies; to provide for special rules for the assessment of normal tax of certain bodies; and to provide for matters connected therewith.

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

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

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

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

“(2) Pending the completion of the declarations referred to in section fourteen, or the determination of the amount of duty payable under this Act, a deposit on account of the duty payable may be made, manually or electronically, to the office of the South African Revenue Service to [whom] which the duty is payable in terms of subsection (3).”; and

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

“(3) The duty and any penalty payable under section 4 and any transfer duty and interest payable under any law repealed by this Act shall be paid, manually or electronically, to the office of the South African Revenue Service where payments are accepted, for the area in which the property in question is situated or, if the property is situated in the area of more than one office of the South African Revenue Service where payments are accepted, to any one of those offices, or, in either case, to the office of the South African Revenue Service or the area where the deeds registry in which the property is registered is situated.”.

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

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

(a) by the substitution in subsection (15A) for the words preceding paragraph (a) of the following words:

“No duty shall be payable in respect of the acquisition of any property under **[a company formation]** an asset-for-share transaction as contemplated in section 42 of the Income tax Act, 1962 (Act No. 58 of 1962), where—”; and

(b) by the insertion of the following subsection after subsection (15A):

“(15B) No duty shall be payable in respect of the acquisition of property operated and managed by a person on behalf of a rental pool scheme as contemplated in section 52(2) of the Value-Added Tax Act, 1991, where the person acquiring that property elects in writing that that property must continue to be operated and managed by that person on behalf of a rental pool scheme.”.

(2) Subsection (1)(a) is deemed to have come into operation in respect of the acquisition of any property on or after 1 January 2007.

Amendment of section 4C of Act 24 of 1956, as inserted by section 2 of Act 119 of 1991

3. (1) Section 4C of the Pension Funds Act, 1956, is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) No [stamp duty,] registration fee or costs shall be payable in respect of any transfer or endorsement referred to in subsection (1).”.

(2) Subsection (1) comes into operation on 1 July 2008.

Amendment of section 37D of Act 24 of 1956, as inserted by section 14 of Act 94 of 1977 and amended by section 14 of Act 80 of 1978 and section 4 of Act 65 of 2001 5

4. (1) Section 37D of the Pension Funds Act, 1956, is hereby amended—

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

“(d) deduct from a member’s benefit or minimum individual reserve, as the case may be, any— 10

(i) amount assigned from [his or her pension interest] such benefit or individual reserve to a non-member spouse or any other person in terms of a valid order made by a competent court; and

(ii) employees’ tax required to be deducted or withheld in terms of the Fourth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), as a result of the deduction in subparagraph (i);”;
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(b) by the substitution in subsection (1) for the words in paragraph (e) preceding the proviso of the following words: 20

“For the purposes of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), the pension benefit referred to in that section [is] and the tax referred to in paragraph (d)(ii) are deemed to accrue to the member on the date of the court order;”.

(2) Subsection (1) is deemed to have come into operation on 13 September 2007. 25

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2000, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006 and section 3 of Act 8 of 2007 30
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5. (1) Section 1 of the Income Tax Act, 1962, is hereby amended—

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

“ ‘depreciable asset’ means an asset as defined in paragraph 1 of the Eighth Schedule (other than any trading stock and any debt), in respect of which a [capital] deduction or allowance determined wholly or partly with reference to the cost or value of that asset is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;”;

(b) by the substitution in the definition of “dividend” for the words preceding paragraph (a) of the following words: 55

“ ‘dividend’ means any amount distributed by a company (not being an institution to which section 10(1)(d) applies) to its shareholders [or any amount distributed out of the assets pertaining to any portfolio

- referred to in paragraph (e) of the definition of ‘company’ in this section to shareholders in relation to such portfolio (including, in the case of any co-operative society or company referred to in section 27, any amount distributed on or after 1 April 1977 to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis)], and in this definition the expression “amount distributed” includes—”;
- (c) by the substitution in the definition of “dividend” for the words in paragraph (a) preceding the proviso of the following words: 10
 “in relation to a company that is being wound up, liquidated or deregistered or the corporate existence of which is finally terminated, any profits [(other than those of a capital nature earned before or during the winding-up, liquidation, deregistration or final termination from the disposal of any asset before 1 October 2001) which are] distributed[, whether in cash or otherwise,] in the course [or in anticipation] of the winding-up, liquidation, deregistration or final termination of that company”;
- (d) by the substitution in the definition of “dividend” for the proviso to paragraph (a) of the following proviso: 20
 “: Provided that any profits distributed by the liquidator of the company are deemed for purposes of this definition to have been distributed by the company;”;
- (e) by the substitution in the definition of “dividend” for paragraph (b) of the following paragraph: 25
 “(b) in relation to a company that is not being wound up, liquidated or deregistered or where the corporate existence of that company is not finally terminated, any profits distributed, [whether in cash or otherwise, and whether of a capital nature or not,] including an amount equal to the nominal value, at the time of issue thereof, of any capitalisation shares awarded to shareholders and the nominal value of any bonus debentures or securities awarded to shareholders; and”;
- (f) by the deletion in the definition of “dividend” of paragraph (c); 35
- (g) by the deletion in the definition of “dividend” of the word “and” at the end of paragraph (cA);
- (h) by the deletion in the definition of “dividend” of paragraph (d);
- (i) by the deletion in the definition of “dividend” of the word “or” at the end of paragraph (e); 40
- (j) by the substitution in the definition of “dividend” for paragraph (f) of the following paragraph: 45
 “(f) subject to the provisions of the first proviso to this definition, any [cash and the value of any asset given to a shareholder to the extent to which the cash and the value of the asset] distribution to the extent that it represents a reduction of the share capital or share premium account of a company; [or]”;
- (k) by the insertion in the definition of “dividend” after paragraph (f) of the following paragraph: 50
 “(g) any amount distributed by a company to a shareholder where the company and the shareholder form part of the same group of companies as defined in section 41, to the extent that the shareholder reduces the cost of the shares held in the company in accordance with generally accepted accounting practice as a result of the distribution;”;
- (l) by the substitution in the definition of “dividend” for paragraph (i) of the following paragraph: 55
 “(i) any amount distributed by a co-operative by way of a bonus, to the extent that such amount is allowable as a deduction from the income of such co-operative under the provisions of section 27;”;
- (m) by the insertion in the definition of “dividend” after paragraph (i) of the following paragraph: 60

- “(j) any amount distributed by way of the redemption of a participatory interest in a portfolio, arrangement or scheme contemplated in paragraph (e) of the definition of ‘company’;”;
- (n) by the insertion after paragraph (iii) of the first proviso to the definition of “**dividend**” of the following paragraph: 5
 “(iiiA) in the event of the reduction or redemption of the share capital or share premium of a company, the share capital and share premium that must be apportioned to any class of shares shall not exceed the consideration given in respect of the issue of that class of shares;”;
- (o) by the deletion of the semi-colon at the end of the definition of “**dividend**”;
- (p) by the addition to the definition of “**dividend**” of the following proviso: 10
 “: Provided further that for the purposes of this definition ‘profits’ includes realised and unrealised profits of a company whether or not those unrealised profits have been recognised in the financial records of the company;”;
- (q) by the substitution in the definition of “**gross income**” for paragraph (b) of the following paragraph:
 “(b) any amount payable to the taxpayer— 15
 (i) by [his] the spouse or former spouse of that taxpayer, under any judicial order or written agreement of separation or under any order of divorce, by way of alimony or allowance or maintenance of the taxpayer [or any children]; or
 (ii) in terms of any maintenance order for the maintenance of a child as contemplated in section 15(1) of the Maintenance Act, 1998 (Act No. 99 of 1998);”;
- (r) by the substitution in the definition of “**retirement annuity fund**” for items (bb), (cc) and (dd) of paragraph (b)(xii) of the proviso of the following items: 20
 “(bb) for the transfer of any member’s total interest in any approved retirement annuity fund into another approved retirement annuity fund **[prior to the member becoming entitled to the payment of any annuity,]**
 (cc) for the benefit contemplated in paragraph (b)(x)(cc); [or]
 (dd) as is contemplated in Part V of the Policyholder Protection Rules promulgated in terms of section 62 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998); or 25
 (ee) for any deduction contemplated in paragraph 2(b) of the Second Schedule.”.

(2) Paragraphs (b) and (e) to (p) of subsection (1) are deemed to have come into operation on 1 October 2007 and shall apply in respect of any amount distributed on or after that date. 40

(3) Paragraphs (c) and (d) of subsection (1) come into operation on 1 January 2009 and shall apply in respect of any amount distributed on or after that date.

(4) Paragraphs (q) and (r) of subsection (1) are deemed to have come into operation on 13 September 2007. 45

Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, 5 of Act 40 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 70 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, 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 65 of 1986, section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 5 of Act 19 of 2001, section 10 of Act 30 of 2002, section 15 of Act 45 of 2003, section 4 of Act 20 of 2006 and section 4 of Act 8 of 2007 50
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6. Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10) for paragraph (c) of the following paragraph:

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

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969, 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 and section 8 of Act 31 of 2005 5

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

- (a) by the substitution for the heading of the following heading:
 “**Rebate or deduction in respect of foreign taxes on income**”;
- (b) by the deletion in subsection (1B) of paragraph (e); 10
- (c) by the insertion after subsection (1B) of the following subsections:

“(1C) For the purpose of determining the taxable income derived by any resident from carrying on any trade, there shall be allowed as a deduction from the income of such resident so derived the sum of any taxes on income (other than taxes contemplated in subsection (1A)) proved to be payable by that resident to any sphere of government of any country other than the Republic, without any right of recovery by any person other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment. 15 20

(1D) Notwithstanding the provisions of subsection (1C), the deduction of any tax 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 sections 11(n), 18 and 18A must be deemed to have been incurred proportionately in the ratio that that income bears to total income.”; 25

- (d) by the substitution for subsection (2) of the following subsection: 30

“(2) The rebate under subsection (1) and the deduction under subsection (1C) shall not be granted in addition to any relief to which the resident is entitled under any agreement between the governments of the Republic and the said other country for the prevention of or relief from double taxation, but may be granted in substitution for the relief to which the resident would be so entitled.”; and 35

- (e) by the substitution for subsections (4) and (5) of the following subsections:

“(4) For the purposes of this section the amount of any foreign tax proved to be payable as contemplated in subsection (1A) or (1C) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be converted to the currency of the Republic on the last day of that year of assessment by applying the average exchange rate for that year of assessment. 40

(5) Where a rebate or deduction was allowed or should have been allowed in terms of this section against the normal tax payable by, or the income of, any resident in any previous year of assessment in respect of any amount of tax which was proved to be payable to the government of any other country, and— 45

(a) it is proved by that resident that the amount of the tax actually payable to such government exceeds the amount of tax in respect of which the rebate or deduction was so allowed; or 50

(b) the Commissioner is satisfied that the amount of the tax actually payable to such government is less than the amount of tax in respect of which the rebate or deduction was so allowed,

the Commissioner may, notwithstanding the provisions of section 79 or section 81(5), but subject to [subsection] subsections (1B)(a) and (1D) issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate or deduction in respect of that amount of tax actually payable in that other currency translated to the currency of the Republic at the average exchange rate applicable for that previous year of assessment, which shall be allowed against normal tax or as a deduction: 60
 Provided that the Commissioner shall not issue any such reduced or

additional assessment after the expiration of six years from the date of the assessment in terms of which the rebate or deduction of the amount of tax proved to be payable was so allowed, unless the Commissioner is satisfied that the fact that the amount of tax proved to be payable to such other government was incorrectly reflected was due to fraud or misrepresentation or non-disclosure of material facts.”. 5

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 and section 9 of Act 31 of 2005 10

8. (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection: 15

“(11) The amount deducted, other than any lump sum benefit contemplated in paragraph 2 of the Second Schedule, from a member’s minimum individual reserve in terms of section 37D(1)(d) of the Pension Funds Act, 1956 (Act No. 24 of 1956), shall, to the extent that the deduction is made in terms of a maintenance order for the maintenance of a child as contemplated in section 15(1) of the Maintenance Act, 1998 (Act No. 99 of 1998), be deemed to have accrued to that member on the date of the deduction.”. 20

(2) Subsection (1) is deemed to have come into operation on 13 September 2007 and shall apply in respect of any amount deducted on or after that date.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006 and section 6 of Act 8 of 2007 25 30 35

9. Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (eB) of the following paragraph: 40

“(eB) Where a replacement asset in relation to an asset of a person as contemplated in paragraph (e) constitutes a depreciable asset, that person shall be deemed to have recovered or recouped in a year of assessment so much of the amount contemplated in paragraph (e) apportioned to that asset as contemplated in paragraph (eA) as bears to the total amount of the recovery or recoupment contemplated in paragraph (e) the same ratio as the amount of any [capital] deduction or allowance allowed in that year of assessment in respect of that replacement asset bears to the total amount of the [capital] deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) allowable for all years of assessment in respect of that replacement asset.”. 45 50

Amendment of section 8B of Act 58 of 1962, as inserted by section 6 of Act 104 of 1980, and amended by section 6 of Act 121 of 1984, section 6 of Act 101 of 1990, section 8 of Act 32 of 2004, section 11 of Act 31 of 2005 and section 6 of Act 20 of 2006 55

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

“~~[There]~~ Notwithstanding section 9C, there must be included in the income of a person for a year of assessment any gain made by that person during that year from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, which is disposed of by that person within five years from the date of grant of that qualifying equity share, otherwise than—”. 5

(2) Subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any disposal on or after that date.

Amendment of section 8C of Act 58 of 1962, as inserted by section 7 of Act 96 of 1981 and amended by section 7 of Act 121 of 1984, section 7 of Act 101 of 1990, section 8 of Act 32 of 2004, section 12 of Act 31 of 2005 and section 7 of Act 20 of 2006 10

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

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

“Notwithstanding ~~[section]~~ sections 9B, 9C and ~~[section]~~ 23(m), a taxpayer must include in or deduct from his or her income for a year of assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer—”; 15

(b) by the deletion in subsection (3)(b) of the word “and” at the end of subparagraph (iii); 20

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

“(iv) immediately before that taxpayer dies, if all the restrictions relating to that equity instrument are or may be lifted on or after death[.]; and”; 25

(d) by the addition to subsection (3)(b) of the following subparagraph:

“(v) the time a disposal contemplated in subsection (2)(a)(i) or (b)(i) occurs.”; 30

(e) by the substitution in subsection (7) for paragraphs (b) and (c) of the definition of “**consideration**” of the following paragraphs: 30

“(b) by the taxpayer in respect of any other restricted equity instrument which had been disposed of by that taxpayer in exchange for that equity instrument, reduced by any amount attributable to the gain or loss determined in terms of subsection (4)(b); **and** or

(c) by any person contemplated in subsection (5)(a) or (b) in respect of that restricted equity instrument **[or other equity instrument contemplated in paragraph (b), which would have been taken into account had it been given by the taxpayer in respect of that equity instrument or other equity instrument]** to the extent that the amount does not exceed the amount the taxpayer would have had to give to acquire that equity instrument had it not been disposed of or deemed to have been disposed of by him or her, but does not include any amount given or to be given by that person to the taxpayer to acquire that restricted equity instrument **[or to any other person contemplated in subsection (5)]**”; and 45

(f) by the substitution in subsection (7) for paragraph (g) of the definition of “**restricted equity instrument**” of the following paragraph: 40

“(g) which is not deliverable to the taxpayer until the happening of an event, whether fixed or contingent, **other than the requirement to pay the consideration in respect of the acquisition of that equity instrument**]; and”. 50

(2) Subject to subsection (3), subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any equity instrument held or acquired on or after that date.

(3) Subsection (1)(f) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any equity instrument acquired on or after that date. 55

Substitution of section 9A of Act 58 of 1962, as inserted by section 8 of Act 85 of 1987, amended by section 8 of Act 141 of 1992, section 8 of Act 21 of 1994, section 8 of Act 28 of 1997, section 8 of Act 59 of 2000 and section 13 of Act 74 of 2002

12. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 9A of the following section:

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“Blocked foreign funds

9A. (1) Where any amount, or any portion of any amount, received by or accrued to any person which is required to be included in the income of that person during any year of assessment may not be remitted to the Republic during that year as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount arose, that person shall be allowed to deduct from his or her income for that year an amount equal to so much of the amount or portion which may not be remitted as is required to be included in the income of that person for that year.

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(2) The amount or portion which is allowed to be deducted during the year of assessment contemplated in subsection (1) shall be deemed to be an amount received by or accrued to the person contemplated in that subsection in the following year of assessment.

(3) Where any amount, or any portion of any amount, of the net income of a controlled foreign company may not be remitted to the Republic for the reasons contemplated in subsection (1), there shall be allowed to be deducted from the income of the controlled foreign company for that year an amount equal to so much of the amount or portion which may not be remitted.

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(4) The amount or portion which may not be remitted during the year of assessment contemplated in subsection (3) shall, to the extent that that amount or portion does not exceed the deduction allowed in terms of that subsection, be deemed to be an amount received by or accrued to the controlled foreign company contemplated in that subsection in the following year of assessment.”

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(2) Subsection (1) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991, section 9 of Act 141 of 1992, section 6 of Act 113 of 1993, section 7 of Act 36 of 1996, section 26 of Act 30 of 1998, section 16 of Act 53 of 1999, section 21 of Act 45 of 2003, section 12 of Act 32 of 2004, section 22 of Act 9 of 2006 and section 8 of Act 8 of 2007

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13. Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

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“For the purposes of this section “**affected share**”, in relation to a taxpayer, means a listed share in a company as contemplated in paragraph (a) of the definition of ‘listed company’, which has been disposed of before 1 October 2007 by the taxpayer who immediately prior to such disposal had been the owner of such share as a listed share for a continuous period of at least five years”.

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Insertion of section 9C of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997, amended by section 27 of Act 30 of 1998, section 18 of Act 30 of 2000 and repealed by section 9 of Act 59 of 2000

14. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 9B of the following section:

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“Circumstances in which certain amounts received or accrued from disposal of shares are deemed to be of a capital nature

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

“**connected person**” means a connected person as defined in section 1, provided that the expression ‘and no shareholder holds the majority voting rights of such company’ in paragraph (d)(v) of that definition shall be disregarded; and

“**qualifying share**”, in relation to any taxpayer, means an equity share as defined in section 44, which has been disposed of by the taxpayer or which is treated as having been disposed of by the taxpayer in terms of paragraph 12 of the Eighth Schedule, if the taxpayer immediately prior to such disposal had been the owner of that share for a continuous period of at least three years: Provided that the share—

- (a) is not a share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (b) is not a share in a company which, at any time during that period of three years, was not a resident, unless it was at that time a company as contemplated in paragraph (a) of the definition of “**listed company**”;
- or
- (c) is not a hybrid equity instrument as defined in section 8E.

(2) Any amount received by or accrued to a taxpayer as a result of the disposal by that taxpayer of a qualifying share shall be deemed to be of a capital nature.

(3) The provisions of this section shall not apply to any qualifying share if at the time of the disposal 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, as defined in section 44, of that company was attributable directly or indirectly to immovable property held by that company at the time of the disposal other than—
 - (i) immovable property held indirectly by a person that is not a connected person to the taxpayer; and
 - (ii) immovable property held directly or indirectly for a period of more than three years prior to that disposal; or
- (b) that company acquired any asset during the period of three years prior to that disposal and amounts were paid or payable by any person during that period to any person other than that company for the use of that asset during that period.

(4) For purposes of this section, where—

- (a) any share has been lent by a lender to a borrower in terms of a securities lending arrangement, such share shall for the purposes of the lender be deemed not to have been disposed of by the lender; and
- (b) any other share of the same kind and of the same or equivalent quantity and quality has been returned by the borrower to the lender, such share and such other share shall be deemed to be one and the same share in the hands of the lender.

(5) There shall in the year of assessment in which any qualifying share is disposed of by the taxpayer be included in the taxpayer’s income any expenditure or losses incurred in respect of such qualifying share and allowed as a deduction from the income of the taxpayer during that or any previous year of assessment in terms of section 11.

(6) Where the taxpayer holds shares which were acquired by the taxpayer on different dates and the taxpayer has disposed of any of those shares, the taxpayer shall for the purposes of this section be deemed to have disposed of the shares held by the taxpayer for the longest period of time.

(7) The provisions of section 22(8) shall not apply as a result of the disposal of any qualifying share.

(8) For the purposes of this section, where a company issues shares to a person in substitution of previously held shares in that company by reason of a subdivision, consolidation or similar arrangement or a conversion contemplated in section 40A or 40B, such share and such previously held shares shall be deemed to be one and the same share if—

- (i) the participation rights and interests of that person in that company remain unaltered; and
- (ii) no consideration whatsoever passes directly or indirectly from that person to that company in relation to the issued shares.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any disposal on or after that date.

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

15. (1) Section 9D of the Income Tax Act, 1962, is hereby amended—
- (a) by the addition in subsection (1) of the word “and” to paragraph (b) of the proviso to the definition of “**controlled foreign company**”;
- (b) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:
- “(ii) the proportional amount determined in the manner contemplated in paragraph (a)(i) (as if the day that foreign company ceased to be a controlled foreign company was the last day of its foreign tax year), of the net income of that company determined for the period commencing on the first day of that foreign tax year and ending on the **[date that] day before** the company so ceased to be a controlled foreign company”;
- (c) by the substitution in the proviso to subsection (2) for paragraph (B) of the following paragraph:
- “(B)to the extent that the participation rights are held by that resident indirectly through any company which is a resident[.]; or”;
- (d) by the addition to the proviso to subsection (2) of the following paragraph:
- “(C)to the extent that—
- (i) the participation rights are held by an insurer in any policyholder fund as defined in terms of section 29A, and are directly attributable to a linked policy or a market-related policy as defined in section 1 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998); and
- (ii) the holding of the participation rights by the insurer does not form part of any transaction, operation or scheme entered into or effected solely or mainly for purposes of utilising the provisions of this paragraph in order to avoid the inclusion of an amount in the income of a resident as contemplated in this subsection.”;
- (e) by the substitution in subsection (2A) for paragraph (e) of the proviso of the following paragraph:
- “(e) where a foreign company becomes a controlled foreign company after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the **[date that] day before** such company becomes a controlled foreign company;”;
- (f) by the substitution in subsection (2A) for subparagraph (aa) of paragraph (i) of the proviso of the following subparagraph:
- “(aa) any transaction, operation or scheme between that controlled foreign company and any connected person in relation to that controlled foreign company **[shall be deemed to be an international agreement as defined in that section]** is subject to section 31(2); and”;
- (g) by the deletion in subsection (6) of the full stop at the end of paragraph (c) of the proviso;
- (h) by the addition to the proviso to subsection (6) of the following paragraph:
- “(d) (i) any asset or foreign equity instrument that is disposed of; and
- (ii) any exchange item denominated, in any currency other than the currency used by that controlled foreign company for purposes of financial reporting shall be deemed not to be attributable to any permanent establishment of the controlled foreign company if the currency used for financial reporting purposes is the

currency of a country which has an official rate of inflation of 100 per cent or more throughout that foreign tax year.”;

- (i) by the substitution in subsection (9) for the words in paragraph (fA) that precede the proviso of the following words:
- “is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable or deemed to be paid or payable to that company by any other controlled foreign company (including any similar amount adjusted in terms of section 31), or any exchange difference determined in terms of section 24I in respect of any exchange item to which that company and that other controlled foreign company are parties, where that controlled foreign company and that other controlled foreign company form part of the same group of companies, or any exchange difference in respect of any forward exchange contract or foreign currency option contract entered into to hedge that exchange item;”;
- (j) by the substitution in subsection (10) for subparagraph (i) of paragraph (a) of the following subparagraph:
- “(i) deems a place of business of a controlled foreign company as fulfilling the requirements of paragraph (a)(i) and (ii) of the definition of ‘**foreign business establishment**’ in subsection (1) by taking into account the utilisation of employees, equipment and facilities of any other controlled foreign company that has the same country of residence as that controlled foreign company where that other controlled foreign company forms part of the same group of companies as the controlled foreign company;”;
- (k) by the substitution in subsection (10)(a) for the proviso of the following proviso:

“: Provided that the Commissioner must take into account the activities and transactions carried out or to be carried out by the persons involved”.

(2) Paragraphs (a) to (e) and (g) to (k) of subsection (1) are deemed to have come into operation on 1 January 2007 and shall apply in respect of any foreign tax year ending during any year of assessment ending on or after that date.

(3) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of goods or services supplied on or after that date.

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

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

- (a) by the substitution in subsection (1)(cA)(i) for the words preceding item (aa) of the following words:
- “any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of

- 1973), any co-operative, close corporation, trust[,] or water services provider, and any Black tribal authority, community authority, Black regional authority [and] or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—”;
- (b) by the deletion in subsection (1)(gB) of the word “or” at the end of subparagraph (i);
- (c) by the addition in subsection (1)(gB) of the word “or” to subparagraph (ii);
- (d) by the addition to subsection (1)(gB) of the following subparagraph: 10
- “(iii) compensation paid in respect of the death of any person where that death arises out of and in the course of the employment of that person, to the extent that that compensation—
- (A) was paid in addition to any compensation contemplated in subparagraph (i) paid in that respect; 15
- (B) does not exceed an amount of R300 000 less the sum of any other amounts which have been excluded from the person’s income by virtue of the exemption conferred by paragraph (x), whether in the current or any previous year of assessment; and
- (C) was paid by the employer of that person;”;
- (e) by the deletion in subsection (1)(k)(ii)(dd) of the word “and” at the end of paragraph (A) of the proviso;
- (f) by the substitution in subsection (1)(k)(ii) for paragraph (B) of the proviso to item (dd) of the following paragraphs: 20
- “(B) this exemption shall not apply in respect of any dividend received by or accrued to any person from any portfolio contemplated in paragraph (e) of the definition of “company” in section 1; and 25
- (C) this exemption [does] shall not apply in respect of any foreign dividend which forms part of any transaction, operation or scheme in terms of which any amount received by or accrued to any person is exempt from tax while any corresponding expenditure (other than expenditure for the delivery of any goods, including electricity) is deductible by that person or by any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act;”; 30
- (g) by the substitution in subsection (1)(o) for the words preceding subparagraph (i) of the following words: 35
- “any form of remuneration [as defined in paragraph 1 of the Fourth Schedule]—”;
- (h) by the substitution in subsection (1)(o) for the words in subparagraph (i) preceding item (aa) of the following words: 40
- “as defined in paragraph 1 of the Fourth Schedule, derived by any person as an officer or crew member of a ship engaged—”;
- (i) by the substitution in subsection (1)(o) for the words in subparagraph (ii) preceding item (aa) of the following words: 45
- “received by or accrued to any **[person]** employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (i) of the definition of gross income in section 1 or an amount referred to in section 8, 8B or 8C in respect of services rendered outside the Republic by that [person] employee for or on behalf of any employer, if that [person] employee was outside the Republic—”;
- (j) by the substitution in subsection (1)(o)(ii) for item (aa) of the following item: 50
- “(aa) for a period or periods exceeding 183 full days in aggregate during any period of 12 months [period commencing or ending during that year of assessment]; and”;
- (k) by the deletion of the word “and” at the end of paragraph (A) of the proviso to subsection(1)(o)(ii);
- (l) by the addition of the word “and” to the end of paragraph (B) of the proviso to subsection (1)(o)(ii); 60
- (m) by the addition to the proviso to subsection (1)(o)(ii) of the following paragraph:

- “(C) for the purposes of this subparagraph, where remuneration is received by or accrues to any employee during any year of assessment in respect of services rendered by that employee in more than one year of assessment, the remuneration is deemed to have accrued evenly over the period that those services were rendered;”;
- (n) by the deletion of subsection (1)(tA); and
- (o) by the substitution in subsection (1) for paragraph (u) of the following paragraph:
- “(u) any amount received by or accrued to any person—
- (i) from such person’s spouse or former spouse by way of alimony or allowance or maintenance of such person **[or any children]** under an order of judicial separation or divorce granted in consequence of proceedings instituted after the twenty-first day of March, 1962, or under any agreement of separation entered into after that date; or
- (ii) in terms of any maintenance order for the maintenance of a child as contemplated in section 15(1) of the Maintenance Act, 1998 (Act No. 99 of 1998), other than any amount deemed to be received by or to have accrued to that person in terms of section 7(11);”.

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 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 and section 11 of Act 8 of 2007

17. (1) Section 11 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in paragraph (e) of subparagraph (viii);
- (b) by the substitution for paragraph (gB) of the following paragraph:
- “(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the grant of any **[payment]** patent or the restoration of any patent, or the extension of the **[terms]** term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the registration of any design, or extension of the registration period of any design under the Designs Act, 1993 (Act No. 195 of 1993), or the registration of any trade mark, or the renewal of the registration of any trade mark under the Trade Marks Act, 1993 (Act No. 194 of 1993), or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his or her income;”;
- (c) by the deletion in paragraph (gC) of paragraph (bb) of the proviso;
- (d) by the substitution in paragraph (o) for subparagraph (i) of the following subparagraph:
- “(i) which qualified for **[a capital]** an allowance or deduction in terms of section 11(e), 11B, 11D, 12B, 12C, 12DA, 12E, 14, **[or]** 14bis or 37B(2)(a); and”;

- (e) by the substitution in paragraph (o) for the words after subparagraph (ii) that precede the proviso of the following words:
- “exceeds the sum of the amount received or accrued from the alienation, loss or destruction of that asset and the amount of any **[such capital]** allowance or deduction allowed in respect of that asset in that year or any previous year of assessment or which was deemed to have been allowed in terms of section 12B(4B), **[or]** 12C(4A), 12DA(4) or 37B(4) or taken into account in terms of section 11(e)(ix), as the case may be”;
- (f) by the deletion of the semi-colon at the end of paragraph (dd) of the proviso to paragraph (o); and
- (g) by the addition to paragraph (o) of the following proviso:
- “: Provided further that no election may be made in terms of this paragraph by the taxpayer if the amount received or accrued from the alienation, loss or destruction of the asset was received or accrued from a person that is a connected person in relation to the taxpayer.”

(2) Subsection (1)(b) is deemed to have come into operation on 2 November 2006 and shall apply in respect of any expenditure incurred on or after that date.

Amendment of section 11C of Act 58 of 1962, as inserted by section 18 of Act 32 of 2004

18. Section 11C of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (4) and (5).

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

- 19.** (1) Section 11D of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1)(b) for subparagraphs (i) and (ii) of the following paragraphs:
- “(i) invention as defined in **[section 1]** section 2 of the Patents Act, 1978 (Act No. 57 of 1978);
- (ii) design as defined in section 1 of the Designs Act, 1993 (Act No. 195 of 1993) that qualifies for registration under **[section 15]** section 14 of that Act.”;
- (b) by the addition to subsection (3)(b) of the word “or”;
- (c) by the deletion of subsection (3)(c);
- (d) by the substitution for subsection (5A) for the following subsection:
- “(5A) Notwithstanding any other provision of this section, no deduction shall be allowed in terms of subsection (1) in so far as that deduction is claimed in respect of expenditure incurred—
- (a) to acquire, install, erect, improve or add to any building, machinery, plant, implement, utensil[,] or article[, or];
- (b) to acquire, or for the right of use of, any invention, patent, design, copyright, work or knowledge; or
- (c) by any person carrying on any banking, financial services or insurance business.”; and
- (e) by the substitution for subsection (5B) of the following subsection:
- “(5B) Notwithstanding the provisions of subsection (1), the deduction to be allowed to a taxpayer in terms of that subsection in respect of expenditure incurred by that taxpayer shall, in so far as that expenditure—
- (a) is incurred to defray expenditure of any other person who is a connected person in relation to the taxpayer, be limited to an amount equal to 150 per cent of the amount of **[that]** expenditure contemplated in subsection (1) incurred by that other person directly in respect of activities undertaken by that other person directly for purposes contemplated in that subsection; or
- (b) is incurred for the right of use of any property, or constitutes interest as defined in section 24J(1), be limited to the amount of the expenditure.”.

(2) Subject to subsection (3), subsection (1) is deemed to have come into operation on 2 November 2006 and shall apply in respect of any expenditure incurred on or after that date.

(3) Subsection (1)(d) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any expenditure incurred on or after that date.

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Insertion of section 11E into Act 58 of 1962

20. The Income Tax Act, 1962, is hereby amended by the insertion after section 11D of the following section:

“Deduction of certain expenditure incurred by sporting bodies

11E. (1) For the purpose of determining the taxable income derived by— 10
 (i) any company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973); or
 (ii) an association of persons that has been incorporated, formed or established in the Republic, 15
 from carrying on any sporting activities falling under a code of sport administered and controlled by a national federation as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998), there shall be allowed as a deduction from the income of that company or association expenditure, not of a capital nature, incurred by that company or association on the development and promotion, directly by that company or association, of sporting activities contemplated in paragraph 9 of Part I of the Ninth Schedule falling under that code of sport.”. 20

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

21. Section 12B of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4A).

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 and section 14 of Act 8 of 2007 30
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22. Section 12C of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4).

Amendment of section 12D of Act 58 of 1962, as amended by section 19 of Act 59 of 2000, section 23 of Act 30 of 2000, section 28 of Act 60 of 2001 and section 16 of Act 30 of 2002 40

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

(a) by the substitution in subsection (1) for the words following paragraph (d) in the definition of “**affected asset**” of the following words:

“**[contracted for on or after the effective date, and the construction, erection or installation of which commenced on or after such date,]** and includes any earthworks or supporting structures forming part of such pipeline, transmission line or cable or railway line;” 45

(b) by the deletion in subsection (1) of the definition of “**effective date**”;

(c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 50

“There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of any

new and unused affected asset, or the improvement of any affected asset, which—”;

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

“(a) is owned by the taxpayer and is brought into use for the first time by such taxpayer [**on or after the effective date**]; or”;

- (e) by the deletion in subsection (2) of the proviso; and

- (f) by the substitution in subsection (4)(b) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) the actual cost [**of acquisition**] of the asset incurred by the taxpayer; or

(ii) the cost which [**a person**] the taxpayer would, if [**he**] the taxpayer had acquired or improved the said asset under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition or improvement of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition or improvement of the asset (including the direct cost of the installation or erection thereof).”.

(2) Subsection (1) comes into operation on 1 January 2008 and shall apply in respect of any asset brought into use on or after that date.

Insertion of section 12DA into Act 58 of 1962

24. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 12D of the following section:

“Deduction in respect of rolling stock

12DA. (1) There shall be allowed to be deducted from the income of the taxpayer an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition or improvement of any rolling stock which is owned by the taxpayer, or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of an ‘instalment credit agreement’ as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and is used directly by the taxpayer wholly or mainly for the transportation of persons, goods or things to the extent that such rolling stock is used in the production of that taxpayer’s income.

(2) The allowance contemplated in subsection (1) shall, in respect of any one year of assessment, be 20 per cent of the cost incurred in respect of any rolling stock.

(3) For the purposes of this section the cost to a taxpayer of any rolling stock shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired or improved the rolling stock under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition or improvement of the rolling stock was in fact concluded, have incurred in respect of the direct cost of the acquisition or improvement of the rolling stock or, where the rolling stock has been acquired to replace rolling stock which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed rolling stock and has been excluded from the taxpayer’s income in terms of section 8(4)(e), whether in the current or any previous year of assessment.

(4) Where any rolling stock in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(5) No deduction shall be allowed under this section in respect of any rolling stock that has been disposed of by the taxpayer during any previous year of assessment.

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any rolling stock shall not in the aggregate exceed the amount of such cost.”

(2) Subsection (1) comes into operation on 1 January 2008 and shall apply in respect of any rolling stock brought into use on or after that date.

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

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

(a) by the substitution in subsection (4)(a)(ii) for the words preceding item (aa) of the following words:

“none of the shareholders or members at any time during the year of assessment of the company, [or] close corporation or co-operative holds any shares or has any interest in the equity of any other company as defined in section 1, other than—”;

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

“(dd) less than 5 per cent of the interest in a social or consumer co-operative or a co-operative burial society as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other similar co-operative if all of the income derived from the trade of that co-operative during any year of assessment is solely derived from its members; [or]”;

(c) by the addition in subsection (4)(a)(ii) of the word “or” to item (ee);

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

“(ff) less than 5 per cent of the interest in a primary savings co-operative bank or a primary savings and loans co-operative bank as defined in the Co-operative Banks Act, 2007, that may provide, participate in or undertake only the following—

(A) in the case of a primary savings co-operative bank, banking services contemplated in section 14(1)(a) to (d) of that Act; and

(B) in the case of a primary savings and loans co-operative bank, banking services contemplated in section 14(2)(a) or (b) of that Act.”;

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

“(iii) not more than 20 per cent of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company, [or] close corporation or co-operative consists collectively of investment income and income from the rendering of a personal service; and”;

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

“(ii) any interest as contemplated in section 24J (other than any interest received by or accrued to any co-operative bank as contemplated in paragraph (a)(ii)(ff)), any amount contemplated in section 24K and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and”.

Amendment of section 12F of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001

26. (1) Section 12F of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the heading of the following heading: 5
“Deduction in respect of [certain aircraft hangars, aprons, runways and taxiways] airport and port assets”;
- (b) by the substitution in subsection (1) for the definition of **“affected asset”** of the following definition: 10
“[affected] airport asset’ means any new and unused aircraft hangar, apron, runway or taxiway on any designated airport, **[contracted for on or after the effective date, and the construction, erection or installation of which commenced on or after such date,]** and includes any earthworks or supporting structures forming part of such hangar, apron, runway or taxiway; **and”**;
- (c) by the deletion in subsection (1) of the definition of **“effective date”**; 15
- (d) by the addition to subsection (1) of the following definition: 15
“port asset’ means any new and unused port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot, and includes any earthworks or supporting structures forming part of such terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or depot.”; 20
- (e) by the substitution for subsections (2) and (3) of the following subsections: 25
“(2) In respect of any [affected] airport asset or port asset which—
(a) is brought into use for the first time by such taxpayer **[on or after the effective date]**; and
(b) is used directly by such taxpayer in carrying on his **[sole]** business as airport, **[operator] terminal or transport operator or port authority,**
there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition (including the construction, erection or installation) of such asset to the extent that such **[affected]** asset is used in the production of the taxpayer’s income. 35
(3) The allowance contemplated in subsection (2) in respect of an **[affected]** asset shall, in respect of any one year of assessment, be five per cent of the cost incurred in respect of that asset.
(3A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and 40
45
- (f) by the substitution for subsections (5) and (6) of the following subsections: 50
“(5) No deduction shall be allowed under this section in respect of any [affected] asset which has been disposed of by the taxpayer during any previous year of assessment.
(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any **[affected]** asset shall not in the aggregate exceed the amount of such cost.”. 55
- (2) Subsection (1) comes into operation on 1 January 2008 and shall apply in respect of any asset brought into use on or after that date.

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 29 of Act 60 of 2001 and section 22 of Act 74 of 2002

27. Section 12G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “**cost of an industrial asset**” of the following paragraph:

“(a) so much of the expenditure as exceeds the fair market value of that asset;”.

Insertion of section 13quin into Act 58 of 1962

28. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 13quat of the following section:

“Deduction in respect of commercial buildings

13quin. (1) There shall be allowed to be deducted from the income of the taxpayer an allowance equal to five per cent of the cost to the taxpayer of any new and unused building owned by the taxpayer, or any new and unused improvement to any building owned by the taxpayer, if that building or improvement is wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer’s trade, other than the provision of residential accommodation.

(2) For the purposes of this section the cost to a taxpayer of any building or improvement shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he had acquired, erected or improved the building under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition, erection or improvement of the building was in fact concluded, have incurred in respect of the direct cost of the acquisition, erection or improvement of the building.

(3) Where any building or improvement in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(4) No deduction shall be allowed under this section in respect of any building that has been disposed of by the taxpayer during any previous year of assessment.

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

(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any building or improvement shall not in the aggregate exceed the amount of such cost.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2007 and shall apply in respect of any building or improvement that was contracted for on or after that date and the construction, erection or installation of which commenced on or after that date.

Amendment of section 15 of Act 58 of 1962, as amended by section 20 of Act 55 of 1966, section 18 of Act 129 of 1991, section 16 of Act 141 of 1992, section 24 of Act 31 of 2005 and section 15 of Act 20 of 2006

29. Section 15 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of the following paragraph: 5

“(a) an amount to be ascertained under the provisions of section 36, in lieu of the allowances in [section] sections 11(e), (f), (gA), (gC), [and] (o), 12D, 12DA, 12F and 13quin;”.

Amendment of section 18 of Act 58 of 1962, as amended by section 15 of Act 95 of 1967, section 12 of Act 76 of 1968, section 17 of Act 89 of 1969, section 14 of Act 52 of 1970, section 15 of Act 88 of 1971, section 12 of Act 104 of 1980, section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995, section 23 of Act 53 of 1999, section 26 of Act 59 of 2000, section 19 of Act 30 of 2002, section 25 of Act 31 of 2005 and sections 2 and 17 of Act 8 of 2007 10 15

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

(a) by the substitution in subsection (1)(b) for subparagraphs (i), (ii) and (iii) of the following subparagraphs:

“(i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopedist for professional services rendered or medicines supplied to the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer if the taxpayer was a member of a scheme or fund contemplated in paragraph (a) and that dependant was, at the time such amounts were paid, admitted as a dependant of the taxpayer in terms of that scheme or fund; or 20

(ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer contemplated in subparagraph (i); or 25

(iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the taxpayer, his or her spouse or his or her children, or any dependant of the taxpayer contemplated in subparagraph (i);” 30 35

(b) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs:

“(c) any amounts (other than amounts recoverable by the taxpayer or his or her spouse) which were paid by the taxpayer during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the taxpayer or his or her spouse or children, or any dependant of the taxpayer contemplated in paragraph (b)(i), and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (b) of this subsection; and 40 45

(d) any expenditure (other than expenditure recoverable by the taxpayer or his or her spouse) necessarily incurred and paid by the taxpayer in consequence of any physical disability suffered by the taxpayer, his or her spouse or any child, and any dependant of the taxpayer contemplated in paragraph (b)(i).” 50

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

“as in the aggregate exceeds 7,5 per cent of the taxpayer’s taxable income (excluding any retirement fund lump sum benefit) as determined before allowing any deduction under this [section] subparagraph.” 55

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970 and amended by section 16 of Act 88 of 1971, section 13 of Act 90 of 1972, section 14 of Act 65 of 1973, section 16 of Act 69 of 1975, section 13 of Act 104 of 1980, section 16 of Act 96 of 1981, section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1988, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991, section 11 of Act 36 of 1996, section 24 of Act 30 of 2000, 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 and section 18 of Act 8 of 2007 5

31. Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution 10 for the heading of the following heading:

“Deduction of donations to certain [public benefit] organisations”.

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

32. Section 20 of the Income Tax Act, 1962, is hereby amended— 20

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

“(ii) the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by or a compromise made with [his creditors] 25 any creditor of such person whereby [his liabilities] any liability owed by such person to [them have] such creditor has been reduced or extinguished, [provided] to the extent that—

(aa) the amount advanced by such [liabilities arose in the ordinary course of trade] creditor was used, directly or 30 indirectly, to fund expenditure or an asset; and

(bb) a deduction was allowed, in terms of section 11, in respect of such expenditure or asset;” and

(b) by the substitution for subsection (2) of the following subsection: 35

“(2) For the purposes of this section “assessed loss” means any amount by which the deductions admissible under [sections] section 11 [to 19, inclusive,] exceeded the income in respect of which they are so admissible.”.

Amendment of section 23A of Act 58 of 1962, as inserted by section 21 of Act 121 of 1984, amended by section 13 of Act 96 of 1985, section 15 of Act 65 of 1986, section 12 of Act 70 of 1989, section 22 of Act 101 of 1990, section 24 of Act 129 of 1991, section 34 of Act 30 of 1998 and section 32 of Act 60 of 2001 40

33. Section 23A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “affected asset” of the following paragraph: 45

“(b) any machinery, plant, implement, utensil, article, aircraft or ship which has been let and in respect of which the lessor is or was entitled to an allowance under section 11(e), 12B, [or] 12C, 12DA or 37B(2)(a), whether in the current or a previous year of assessment, other than any such machinery, plant, implement, utensil, article, aircraft or ship let by him under an agreement of lease formally and finally signed by every party to the agreement before 19 November 1988,”. 50

Amendment of section 23D of Act 58 of 1962, as inserted by section 19 of Act 113 of 1993 and amended by section 10 of Act 140 of 1993, section 20 of Act 21 of 1995, section 29 of Act 31 of 2005 and section 21 of Act 8 of 2007

34. Section 23D of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion of subsection (1);
- (b) by the substitution for subsection (2) of the following subsection:
- “Where any depreciable asset which has been let or licensed by a taxpayer to a lessee or licensee was **[acquired] disposed of [by] to** the taxpayer, whether directly or indirectly **[from] by—**
- (a) such lessee or licensee;
- (b) a person who is a connected person in relation to such lessee or licensee;
- (c) a sublessee or sublicensee in relation to such asset (being a person to whom the right of use of such asset has been granted by a lessee or licensee or by any person to whom the right of use of such asset has previously been granted); or
- (d) a person who is a connected person in relation to such sublessee or sublicensee,
- [and a deduction was previously granted to such lessee, such connected person or such sublessee under section 11(e), 11B, 11D, 11(gA), 11(gC), 12B, 12C, 13, 14 or 14bis or section 12 prior to the repeal thereof by section 16 of the Income Tax Act, 1991 (Act No. 129 of 1991), or section 27(2)(d) prior to the deletion thereof by section 28(b) of that Act, whether in the current or any previous year of assessment] any deduction or allowance claimed by [such lessor] the taxpayer in respect of such asset [in terms of section 11(e), 11B, 11D, (gA), (gC) or (o), 12C, 13, 14 or 14bis] shall be calculated on an amount not exceeding [the lesser of the cost or adjustable cost, as the case may be, of such asset to such lessee, such connected person or such sublessee or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer] the amount determined in accordance with subsection (2A).”;**
- (c) by the insertion after subsection (2) of the following subsection:
- “(2A) The amount to be determined for purposes of subsection (2) is the sum of—
- (a) the cost or adjustable cost, as the case may be, of such asset to such lessee or licensee, such connected person or such sublessee or sublicensee, less the sum of—
- (i) all deductions which have been allowed to the lessee, licensee, connected person, sublessee or sublicensee in respect of that asset; and
- (ii) all deductions that are deemed to have been allowed to the lessee, licensee, connected person, sublessee or sublicensee in respect of that asset in terms of sections 11(e)(ix), 12B(4B), 12C(4A), 12D(3A), 12DA(4), 12F(3A), 13(1A), 13bis(3A), 13ter(6A), 13quin(3) or 37B(4) or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer;
- (b) any amount contemplated in paragraph (n) of the definition of ‘gross income’ in section 1 that is required to be included in the income of the lessee, licensee, connected person, sublessee or sublicensee that arises as a result of the disposal; and
- (c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the lessor, licensee, connected person, sublessor or sublicensee that arises as a result of the disposal.”; and
- (d) by the deletion of subsection (3).

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

35. 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), (gC), 12B, 12C, 12DA, [or] 13 or 13quin in respect of an asset which is the subject matter of such sale and leaseback arrangement.”. 5

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000 and section 34 of Act 60 of 2001 10

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

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

“(a) which is allowable as a deduction in terms of the provisions of section 11(a), (c) or (d), section 11D(1), or section 28(2)(a) and (c); and”;

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

“the amount of the expenditure in respect of which a deduction shall be allowable [as a deduction] in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of—”; 20

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

“(ii) services to be rendered, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such services are rendered bears to the total number of months during which such services will be rendered or, where the period during which such services will be rendered is not determinable, such period during which the services are likely to be rendered; or”; and 25 30

(d) by the substitution for paragraph (aa) of the proviso of the following paragraph:

“(aa) where all the goods or services are to be supplied or rendered within six months after the end of the year of assessment during which the expenditure was incurred, or such person will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period, unless the expenditure is allowable as a deduction in terms of section 11D(1); or”. 35

Insertion of section 23I into Act 58 of 1962 40

37. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 23H of the following section:

“Prohibition of deductions in respect of certain intellectual property

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

‘intellectual property’ means any— 45

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

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

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

(d) copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978); 50

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

(f) property or right of a similar nature to that in paragraph (a), (b), (c), (d) or (e); and 55

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

‘**affected intellectual property**’ means, in relation to a taxpayer, intellectual property (or underlying invention or work)—

(a) which was during the current or any preceding year of assessment wholly or partly the property of the taxpayer or a resident; or

(b) which, or any material part of which, was wholly or mainly discovered, devised, developed, created or produced during the current or any previous year of assessment by the taxpayer or by any other taxpayer who was, at the time the intellectual property, invention or work was discovered, devised, developed, created or produced, or at the time the expenditure contemplated in subsection (2) was incurred, a connected person, as defined in section 31, in relation to the taxpayer.

(2) Notwithstanding any other provision of this Act to the contrary, other than section 11 (gC), no deduction shall be allowed in respect of any amount of expenditure incurred by the taxpayer—

(a) for the use, right of use or permission to use any affected intellectual property; or

(b) in terms of any contractual obligation the value of which is determined directly or indirectly with reference to expenditure for the use, right of use or permission to use any affected intellectual property,

to the extent that that amount of expenditure does not constitute an amount of income received by or accrued to any other person or an amount of net income of a controlled foreign company which is taken into account in determining an amount which is required to be included in the income of any resident in terms of the provisions of section 9D.

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

(2) Subsection (1) comes into operation on 1 January 2009 and shall apply in respect of any expenditure incurred on or after that date.

Insertion of section 23J into Act 58 of 1962

38. The Income Tax Act, 1962, is hereby amended by the insertion after section 23I of the following section:

“Limitation of allowances granted in respect of assets previously held by connected persons

23J. (1) Where a depreciable asset acquired by a taxpayer was held within a period of two years preceding the acquisition by a person who was a connected person in relation to that taxpayer at any time during that period, the cost or value of the depreciable asset for the purposes of this section and any deduction or allowance claimed by the taxpayer in respect of that asset shall not exceed an amount determined in accordance with subsection (2).

(2) The amount to be determined for purposes of subsection (1) is the sum of—

(a) the cost of the depreciable asset for purposes of any deductions allowable in respect of that asset to the most recent person contemplated in subsection (1) that previously held that asset (hereinafter referred to as the ‘connected person’), less the sum of—

(i) all deductions which have been allowed to the connected person in respect of the asset; and

(ii) all deductions that are deemed to have been allowed to the connected person in respect of the asset in terms of section

- 11(e)(ix), 12B(4B), 12C(4A), 12D(3A), 12DA(4), 12F(3A),
13(1A), 13bis(3A), 13ter(6A), 13quin(3) or 37B(4);
- (b) any amount contemplated in paragraph (n) of the definition of ‘**gross income**’ in section 1 that is required to be included in the income of the connected person that arises as a result of the disposal of the asset by the connected person; and
- (c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the connected person that arises as a result of the disposal of the asset by the connected person.”

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

39. Section 24B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (2) of the following subsections:

- “(2A) Notwithstanding any provision of subsection (2) to the contrary, if—
- (a) a preference share was issued to a company in exchange for ordinary shares (or preference shares which are convertible into ordinary shares) issued by that company;
- (b) the preference share was redeemed; and
- (c) that company held that preference share for a period of at least five years, the expenditure incurred by that company in respect of the acquisition of the preference share is deemed for the purposes of this Act to be an amount equal to the lesser of market value of the preference share as at the date of acquisition of the preference share or the amount received or accrued in respect of the redemption of the preference share.
- (2B) Where that preference share is disposed of by that company to any other company in terms of an ‘intra-group transaction’ as defined in section 45, that company and that other company must, during the period that that company and that other company form part of the same group of companies, be deemed to be one and the same person for purposes of subsection (2A)(c).”

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

40. (1) Section 24I of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the definition of “**local currency**” of the following paragraph:
- “(a) any exchange item which is attributable to any permanent establishment of a person outside the Republic, the currency used by that permanent establishment for purposes of financial reporting; Provided that for purposes of this paragraph any exchange item shall be deemed not to be attributable to any such permanent establishment if the currency used by that permanent establishment for purposes of financial reporting is the currency of a country which has an official rate of inflation of 100 per cent or more throughout the relevant year of assessment;”;
- (b) by the substitution in subsection (10) for paragraph (c) of the following paragraph:
- “(c) any controlled foreign company in relation to a resident in respect of any exchange difference determined on the translation of an exchange item to which that controlled foreign company and any other controlled foreign company in relation to either that resident or to any other resident company and which forms part of the same group of companies as that resident are party; or”;

(c) by the addition to subsection (10) of the following paragraph:

“(d) any resident or any controlled foreign company in relation to any resident in respect of any forward exchange contract or foreign currency option contract entered into to hedge any exchange item contemplated in paragraph (a), (b) or (c);”;

(d) by the addition to subsection (10) of the following proviso:

“: Provided further that any exchange difference in respect of any forward exchange contract or foreign currency option contract contemplated in paragraph (d) shall be deemed to arise when the relevant exchange item contemplated in paragraph (a), (b) or (c) is realised”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any year of assessment ending on or after that date.

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

41. (1) Section 25D of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Subsection (2) shall not apply to the extent that—

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

(2) Subsection (1) is be deemed to have come into operation on 1 January 2007 and shall apply in respect of any year of assessment ending on or after that date.

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

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

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

“**[Subject to the provisions of this Act]** In determining the taxable income derived by any [taxpayer] person from the carrying on [in the Republic] of short-term insurance business as defined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), [(whether on mutual principles or otherwise) shall be determined by charging] there shall be deducted from the sum of all premiums (including [premiums on] reinsurance premiums) received by or accrued to [such taxpayer] that person in respect of the insurance or reinsurance of any risk[,] and other amounts derived from the carrying on of [such business of insurance in the Republic] that business, the sum of—”;

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

“(b) the actual amount of the liability incurred in respect of any claims during the year of assessment in respect of that business **[of insurance]**, less the value of any claims recovered or recoverable under any contract of insurance, reinsurance, guarantee, security or indemnity; and”;

(c) by the deletion in subsection (2) of paragraph (c);

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

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

- (e) by the deletion in subsection (2) of paragraphs (d), (e) and (f);
- (f) by the deletion of subsections (3) and (4); and
- (g) by the addition of the following subsections:

“(5) The sum of all amounts deducted from the sum of all premiums and other amounts received by or accrued to a person in respect of any year of assessment in terms of subsection (2)(cA) shall be included in the income of that person in the following year of assessment. 5

(6) In determining the taxable income derived by any person from the carrying on of short-term insurance business as contemplated in subsection (2)— 10

- (a) no deduction shall be allowed in terms of section 11(a) in respect of any liability incurred in respect of reinsurance premiums and any claims in respect of that business; and
- (b) the provision of section 23(e) shall not apply in respect of the liabilities contemplated in subsection (2)(cA).” 15

Amendment of section 30 of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999, section 35 of Act 30 of 2000 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 16 of Act 19 of 2001, section 39 of Act 60 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006 and section 25 of Act 8 of 2007 20

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

- (a) by the substitution in subsection (3)(b)(iii) for item (cc) of the following item and words:

“(cc) any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b), which is required to use those assets solely for purposes of carrying on one or more public benefit activities;” 25

- (b) by the substitution in subsection (3)(b) for subparagraph (iiiA) of the following subparagraph; 30

“(iiiA) in the case of a branch of a public benefit organisation contemplated in paragraph (a)(ii) of the definition of ‘public benefit organisation’ in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such branch to any public benefit organisation, institution, board, body, department or administration contemplated in subparagraph (iii), if more than 15 per cent of the receipts and accruals attributable to that branch during the period of three years preceding that termination are derived from a source within the Republic.” 35
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Amendment of section 31 of Act 58 of 1962, as amended section 23 of Act 21 of 1995, section 37 of Act 30 of 1998, section 31 of Act 53 of 1999, section 37 of Act 59 of 2000, section 16 of Act 5 of 2001 and section 46 of Act 45 of 2003

44. (1) Section 31 of the Income Tax Act, 1962, is hereby amended— 45

- (a) by the deletion in subsection (1) of the definition of “**international agreement**”;

- (b) by the substitution in subsection (1) for paragraph (f) of the definition of “**services**” of the following paragraph:

“(f) the conferring of rights to or the use of incorporeal property.”; 50

- (c) by the insertion after subsection (1) of the following subsection:

“(1A) For the purposes of subsection (2), where any supply of goods or services has been effected in respect of any intellectual property as contemplated in the definition of “intellectual property” in section 23I(1), ‘**connected person**’ shall mean a connected person as defined in section 1, provided that the expression ‘and no shareholder holds the majority voting rights of such company’ in paragraph (d)(v) of that definition must be disregarded.”; and 55

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

“(2) Where any supply of goods or services has been effected—

- (a) between—
- (i) (aa) a resident; and
 - (bb) any other person who is not a resident;
 - (ii) (aa) a person who is not a resident; and
 - (bb) a permanent establishment in the Republic of any other person who is not a resident; or
 - (iii) (aa) a person who is a resident; and
 - (bb) a permanent establishment outside the Republic of any other person who is a resident;
- (b) between those persons who are connected persons in relation to one another; and
- (c) at a price which is either—
- (i) less than the price which such goods or services might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm’s length (such price being the arm’s length price); or
 - (ii) greater than the arm’s length price,
- the Commissioner may, for the purposes of this Act in relation to either the acquiror or supplier, in the determination of the taxable income of either the acquiror or supplier, adjust the consideration in respect of the transaction to reflect an arm’s length price for the goods or services.”.

(2) Paragraphs (a), (b) and (d) of subsection (1) are deemed to have come into operation on 1 October 2007 and shall apply in respect of any goods or services supplied on or after that date.

(3) Subsection (1)(c) comes into operation on 1 January 2009 and shall apply in respect of any goods or services supplied on or after that date.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994, section 39 of Act 59 of 2000, section 32 of Act 74 of 2002, section 48 of Act 45 of 2003 and section 4 of Act 32 of 2005

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

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

“(i) **[company which]** person who is not a resident, if such amount is **[derived by such company from any trade carried on through a branch or agency]** effectively connected with a permanent establishment of that person in the Republic [and such amount is subject to tax in the Republic];”; and

(b) by the deletion in the proviso to subsection (1) of paragraph (ii).

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

46. Section 36 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (11)(c) for the words preceding subparagraph (i) of the following words:

“in the case of any post-1973 gold mine, any other deep level gold mine or any post-1990 gold mine, **[a capital]** an allowance calculated at the rate of 10 per cent per annum in the case of a post-1973 gold mine or any other deep level gold mine or 12 per cent per annum in the case of any post-1990 gold mine on the amount of the aggregate of—”; and

- (b) by the substitution in subsection (11)(c) for subparagraph (A) of paragraph (aa) of the following subparagraph:
 - “(A) calculating the **[capital]** allowance provided for in section 25(2) of the Mining Rights Act, 1967;”.

Amendment of section 37A of Act 58 of 1962, as inserted by section 27 of Act 89 of 1969, amended by section 18 of Act 52 of 1970, section 22 of Act 88 of 1971, section 30 of Act 85 of 1974, section 26 of Act 94 of 1983, section 27 of Act 20 of 2006 and section 28 of Act 8 of 2007

47. Section 37A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) of the following subsection: 10

“(7) If the company or trust contemplated in this section contravenes any provision of subsection (1)(a) during any year of assessment by distributing property from that company or trust for a purpose other than—

- (a) rehabilitation upon premature closure;
- (b) decommissioning and final closure;
- (c) post closure coverage of any latent or residual environmental impacts; or
- (d) transfer to another company, trust, or account established for the purposes contemplated in subsection (1)(a),

an amount equal to the market value of property that was so distributed must for purposes of this Act be deemed to be an amount of taxable income which accrued to such company or trust during the year of assessment in which that distribution occurred.”. 20

Insertion of section 37B of Act 58 of 1962, as inserted by section 12 of Act 101 of 1978 and repealed by section 22 of Act 21 of 1994

48. The Income Tax Act, 1962, is hereby amended by the insertion after section 37A of the following section: 25

“Deductions in respect of environmental expenditure

37B. (1) For purposes of this section—

‘environmental treatment and recycling asset’ means any new and unused air, water, and solid waste treatment and recycling plant or pollution control and monitoring equipment if the plant or equipment is— 30

- (a) utilised in the course of a taxpayer’s trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature; and
- (b) required by any law of the Republic for purposes of complying with measures that protect the environment; and 35

‘environmental waste disposal asset’ means any new and unused air, water, and solid waste disposal site, dam, dump, reservoir, or other structure of a similar nature, or any improvement thereto, if the structure is— 40

- (a) of a permanent nature;
- (b) utilised in the course of a taxpayer’s trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature; and
- (c) required by any law of the Republic for purposes of complying with measures that protect the environment. 45

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

- (a) in the case of an environmental treatment and recycling asset, 40 per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 20 per cent in each succeeding year of assessment; and
- (b) in the case of an environmental waste disposal asset, five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and five per cent in each succeeding year of assessment. 50

(3) For the purposes of this section, the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost 55

which a person would, if that person had acquired such asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded, have incurred in respect of the direct cost of the acquisition.

(4) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.

(5) No deduction shall be allowed under this section in respect of any asset that has been disposed of by the taxpayer during any previous year of assessment.

(6) For purposes of determining the taxable income derived during any year of assessment by a taxpayer, there shall be allowed as a deduction any expenditure or loss in respect of decommissioning, remediation or restoration arising from any trade previously carried on by that taxpayer to the extent that such expenditure or loss—

- (a) is incurred for purposes of complying with any law of the Republic that provides for the protection of the environment upon the cessation of trade;
- (b) would otherwise have been allowed as a deduction in terms of section 11 had that taxpayer still been carrying on that trade; and
- (c) is not otherwise allowed as a deduction.

(7) Any assessed loss of a taxpayer as defined in section 20(2) that is attributable to any expenditure or loss contemplated in subsection (6) may be set off against income derived by that taxpayer during a year of assessment notwithstanding the fact that the taxpayer is not carrying on any trade during that year.

(8) No deduction shall be allowed under section 11, 12C or 13 in respect of the cost of an environmental treatment and recycling asset or an environmental waste disposal asset.

(9) The deductions which may be allowed in terms of this section in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset.”.

Repeal of section 37C of Act 58 of 1962

49. Section 37C of the Income Tax Act, 1962, is hereby repealed.

Repeal of section 37D of Act 58 of 1962

50. Section 37D of the Income Tax Act, 1962, is hereby repealed.

Amendment of the heading to Part III of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002

51. The Income Tax Act, 1962, is hereby amended by the substitution for the heading to Part III of the following heading:

“Special rules relating to [company formations, share-for-share transactions] asset-for-share transactions, amalgamation transactions, intra-group [transaction] transactions, unbundling transactions and liquidation distributions”.

Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and 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 and section 32 of Act 8 of 2007

52. (1) Section 41 of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the substitution in subsection (1) for the proviso to the definition of “**base cost**” of the following proviso: 5
- “: Provided that where the base cost of an asset as at a specific date is to be determined as contemplated in paragraph 26 or 27 of the Eighth Schedule, the amount thereof must, for purposes of section 42[, 43] or 44, be determined as if that asset had been disposed of on that date for an amount received or accrued equal to the market value of that asset as at that date;”;
- (b) by the substitution in the definition of “**prescribed proportion**” for paragraph (a) of the following paragraph: 15
- “(a) half of the market value or two-thirds of the actual cost of all assets: Provided that in relation to the assets of a foreign company as defined in section 9D(1) and influenced companies (if any) the expression ‘or two-thirds of the actual cost’ shall be disregarded if any asset disposed of by that foreign company is deemed not to be attributable to a permanent establishment of that company in terms of paragraph (d) of the proviso to section 9D(6); or”;
- (c) by the insertion in subsection (1) after the definition of “**foreign financial instrument holding company**” of the following definition: 20
- “‘**group of companies**’ means a group of companies as defined in section 1: Provided that for the purposes of this definition— 25
- (i) any company that would, but for the provisions of this definition, form part of a group of companies shall not form part of that group of companies if—
- (aa) that company is a company contemplated in paragraph (b), (c), (d) or (e) of the definition of “**company**”;
- (bb) that company is a company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973);
- (cc) any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to that company; or 30
- (dd) that company is a public benefit organisation or recreational club that has been approved by the Commissioner in terms of section 30 or 30A; and
- (ii) any share that would, but for the provisions of this definition, be an equity share shall be deemed not to be an equity share if— 40
- (aa) that share is held as trading stock; or
- (bb) any person is under a contractual obligation to sell or purchase that share, or has an option to sell or purchase that share unless that obligation or option provides for the sale or purchase of that share at its market value at the time of that sale or purchase;”;
- (d) by the substitution in subsection (1) for paragraph (b) of the definition of “**trading stock**” of the following paragraph: 45
- “(b) for purposes of sections 42(7)(b)(i), [43(6)(b),] 44(5)(b)(i), 45(5)(b)(i) and 47(4)(b)(i), means trading stock that is neither of the same kind nor of the same or equivalent quality as trading stock regularly and continuously disposed of by that person;”;
- (e) by the substitution for subsection (2) of the following subsections and the insertion of subsection (3): 55
- “(2) The provisions of this Part must, subject to subsection [(5)] (3), apply in respect of [a company formation] an asset-for-share transaction, [a share-for-share transaction,] an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, [43,] 44, 45, 46 and 47, 60 respectively, notwithstanding any provision to the contrary contained in

the Act, other than sections 24B(2) and (3) and 103 and Part IIA of Chapter III.

(3) The provisions of this Part shall not apply in respect of any transaction in terms of which any asset is disposed of to an insurer as defined in section 29A if the asset is to be held in the insurer's untaxed policyholder fund as contemplated in subsection (4)(a) of that section.”;

(f) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:

“(ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the **[administration]** liquidation or winding-up); and”;

(g) by the deletion of subsection (5);

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

“(a) This subsection applies where a capital distribution in respect of any share as contemplated in paragraph 76(1)(b) of the Eighth Schedule has been received by or has accrued to any person, and that person has disposed of that share, after that receipt or accrual, in terms of a disposal or distribution in respect of which the provisions of section 42, **[43,]** 44, 45 or 47 apply.”; and

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

“(i) the person to whom that share is so disposed of or distributed **[(other than an acquiring company contemplated in section 43(2)(b))]** in respect of that share; and”.

(2) Paragraphs (a), (e), (h) and (i) of subsection (1) are deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date.

(3) Subsection (1)(b) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into during any year of assessment ending on or after that date.

(4) Subsection (1)(c), to the extent that it applies for purposes of—

(a) the definition of **“dividend”** in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), is deemed to have come into operation on 1 October 2007 and shall apply in respect of any amount distributed on or after that date;

(b) Part III of that Act, comes into operation on 1 January 2009;

(c) Part VII of that Act, is deemed to have come into operation on 1 October 2007 and shall apply in respect of any dividend declared on or after that date; and

(d) paragraph 12 of the Eighth Schedule to that Act, is deemed to have come into operation on 1 October 2007 and shall apply in respect of any disposal on or after that date.

(5) Subsection (1)(d) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any transaction entered into on or after that date.

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

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

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

“For the purposes of this section—

‘[company formation] asset-for-share transaction’ means any transaction—”;

- (b) by the substitution for the full stop at the end of subsection (1) of a semi-colon;
- (c) by the addition to subsection (1) of the following definitions:
 “**‘equity share’** means an equity share as defined in section 44; and
‘qualifying interest’ of any person means—
- (a) a qualifying interest as defined in section 41; or
- (b) any equity share held by that person in a company if that person and that company form part of the same group of companies.”;
- (d) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “Subject to subsections (4) and (8), where a person disposes of an asset to a company in terms of [**a company formation transaction**] an asset-for-share transaction—”;
- (e) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:
 “(i) disposed of that asset for an amount equal to the amount contemplated in subparagraphs (i) or (ii) of paragraph (a) of the definition of [**‘company formation transaction’**] ‘asset-for-share transaction’, as the case may be; and”;
- (f) by the substitution in subsection (2)(a) for the words in subparagraph (ii) preceding item (aa) of the following words:
 “acquired the equity shares in that company on the date that such person acquired that asset (other than for purposes of determining whether a share is a ‘qualifying share’ as defined in section 9C) and for a cost equal to—”;
- (g) by the substitution in subsection (2) for the words in paragraph (b) preceding subparagraph (i) of the following words:
 “subject to paragraph (bA), that person and that company must, for purposes of determining—”;
- (h) by the deletion in subsection (2) of the word “and” at the end of paragraph (b);
- (i) by the insertion in subsection (2) after paragraph (b) of the following paragraph:
 “(bA) that company must, where that company is a listed company and the asset was acquired by that company from any person who does not hold more than 25 per cent of the equity share capital of that company after the asset-for-share transaction, be deemed to have acquired the asset at a cost equal to the market value of the asset; and”;
- (j) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 “(c) any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of the equity shares in that company acquired in terms of that [**company formation transaction**] asset-for-share transaction.”;
- (k) by the substitution in subsection (3) for the words in paragraph (a) 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 [**a company formation transaction**] an asset-for-share transaction and that company acquires that asset as an allowance asset—”;
- (l) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 “(b) an asset that constitutes an allowance asset in that person’s hands to a company as part of [**a company formation transaction**] an asset-for-share transaction and that company acquires that asset as trading stock, no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person’s income for the year of that transfer; or”;
- (m) by the substitution in subsection (3) for the words in paragraph (c) preceding subparagraph (i) of the following words:
 “a contract to a company as part of a disposal of a business as a going concern in terms of [**a company formation transaction**] an asset-for-share transaction and that contract imposes an obligation on that person

- in respect of which an allowance in terms of section 24C was allowable to that person for the year preceding that in which that contract is transferred or would have been allowable to that person for the year of that transfer had that contract not been so transferred—”;
- (n) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 5
 “(a) where a person disposes of an asset to a company in terms of **[a company formation]** an asset-for-share transaction; and”;
- (o) by the substitution in subsection (4) for the words preceding subparagraph (i) of the following words: 10
 “the disposal of that asset to that company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of **[a company formation]** an asset-for-share transaction for purposes of this section, and to the extent that such person becomes entitled to any other 15
 consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that asset other than in terms of **[a company formation]** an asset-for-share transaction, in which case the amount to be determined in respect of—”;
- (p) by the substitution in subsection (4) for the words following subparagraph (iii) of the following words: 20
 “that must be attributed to the part of the asset deemed to have been disposed of other than in terms of **[a company formation]** an asset-for-share transaction, must bear the same ratio to the respective 25
 amounts referred to in subparagraphs (i) to (iii) as the market value of the consideration not consisting of equity shares issued by that company bears to the market value of the total consideration in respect of that asset.”;
- (q) by the substitution in subsection (5) for paragraph (a) of the following paragraph: 30
 “(a) acquired any equity share in a company in terms of **[a company formation]** an asset-for-share transaction; and”;
- (r) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words: 35
 “Where a person disposed of any asset in terms of **[a company formation]** an asset-for-share transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (b) of the definition of ‘qualifying interest’, within a period of 18 months after the date of the disposal of that asset (whether or not by way of the 40
 disposal of any shares in that company), or ceases within that period to be engaged on a full-time basis in the business of the company of rendering the service contemplated in subsection (1)(a)(ii)(bb), that person must for purposes of subsection (5), section 22 or the Eighth Schedule be deemed to have—”;
- (s) by the substitution in subsection (6) for paragraph (a) of the following paragraph: 45
 “(a) disposed of all the equity shares acquired in terms of that **[company formation]** asset-for-share transaction that are still held immediately after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the 50
 beginning of that period of 18 months; and”;
- (t) the substitution in subsection (7) for the words preceding paragraph (a) of the following words: 55
 “Where a company disposes of an asset within a period of 18 months after acquiring that asset in terms of **[a company formation]** an asset-for-share transaction, and—”;
- (u) by the substitution in subsection (8) for the words in paragraph (a) preceding subparagraph (i) of the following words: 60
 “any asset which secures any debt to a company in terms of **[a company formation]** an asset-for-share transaction and that debt was incurred by that person—”;

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

“(b) any business undertaking as a going concern to a company in terms of [a company formation] an asset-for-share transaction and that disposal includes any amount of debt that is attributable to, and arose in the normal course of that business undertaking,”;

- (w) by the substitution in subsection (8) for the words following paragraph (b) of the following words:

“that person must, upon the disposal of any equity share acquired in terms of that [company formation] asset-for-share transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) or (b), treat so much of the face value of that debt as relates to that equity share, as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset or, where that equity share is held as trading stock, as income to be included in that person’s income.”; and

- (x) by the deletion of subsection (9).

(2) Subject to subsection (3), subsection (1) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date.

(3) Subsection (1)(f) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any transaction entered into on or after that date.

Repeal of section 43 of Act 58 of 1962

54. (1) Section 43 of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date.

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

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

(a) by the deletion of subsection (12); and

(b) by the substitution for subsection (14) of the following subsection:

“(14) The provisions of this section do not apply in respect of any transaction if—

(a) the resultant company holds at least 70 per cent of the equity shares in the amalgamated company immediately before the amalgamation, conversion or merger;

(b) the resultant company is a company contemplated in paragraph (c), (d) or (e)(i) of the definition of ‘company’;

(c) the resultant company is a company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973);

(d) the resultant company is a company contemplated in paragraph (b) or (e)(ii) of the definition of ‘company’ in section 1 and does not have its place of effective management in the Republic;

(e) any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to the resultant company; or

(f) the resultant company is a public benefit organisation or recreational club approved by the Commissioner in terms of section 30 or 30A.”.

(2) Subsection (1)(a) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date.

(3) Subsection (1)(b) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any transaction entered into on or after that date.

Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005 and section 35 of Act 8 of 2007

56. (1) Section 45 of the Income Tax Act, 1962, is hereby amended— 5

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

“(b) Where a transferee company which has acquired an asset as contemplated in paragraph (a) ceases within a period of six years after the date of that acquisition to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) at any time before the disposal by the transferee company of that asset, that transferee company must—”;

(b) by the deletion in subsection (6) of paragraph (a);

(c) by the deletion in subsection (6) of paragraph (b); and 15

(d) by the addition to subsection (6) of the following paragraphs:

“(c) the asset was disposed of by the transferor company in exchange for shares issued by the transferee company;

(d) the asset constitutes a share that is distributed by the transferor company to the transferee company; or 20

(e) the asset was disposed of by the transferor company to the transferee company in terms of a liquidation distribution referred to in section 47 regardless of whether or not an election has been made for the provisions of that section to apply and regardless of whether or not that transferee company acquired that asset as a capital asset or as trading stock”.

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

(3) Subsection (1)(b) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date.

(4) Subsection (1)(c) comes into operation on 1 January 2009 and shall apply in respect of any transaction entered into on or after that date. 30

(5) Subsection (1)(d) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any transaction entered into during any year of assessment ending on or after that date.

Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 23 of Act 30 of 2002, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005 and section 36 of Act 8 of 2007 35

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

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40

“(a) where that unbundling company is a listed company and the shares of the unbundled company are listed or will be listed within 12 months after that disposal, to the shareholders of that unbundling company;”;

(b) by the substitution for the full stop at the end of subsection (1) of a semi-colon;

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

“‘**equity share**’ means an equity share as defined in section 44.”;

(d) by the substitution in subsection (3) for subparagraph (ii) of the following subparagraph: 50

“(ii) the unbundled shares must, other than for purposes of determining whether a share is a ‘qualifying share’ as defined in section 9C, be deemed to have been acquired on the same date as the unbundling shares;”;

(e) by the deletion of subsection (7)(a). 55

(2) Subject to subsections (3) and (4), subsection (1) comes into operation on 1 January 2008 and shall apply in respect of any transaction entered into on or after that date.

(3) Subsection (1)(d) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any transaction entered into on or after that date. 60

(4) Subsection (1)(e) is to be deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date.

Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006 and section 37 of Act 8 of 2007 5

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

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

“(ii) on the date of that disposal [**holds at least 70 per cent of the equity shares and voting rights of that liquidating company]** forms part of the same group of companies as the liquidating company; and”;

(b) by the addition to subsection (6)(a) of the word “or”; and

(c) by the deletion in subsection (6) of paragraph (b). 15

(2) Subsection (1)(a) comes into operation on 1 January 2008 and shall apply in respect of any distribution made on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 January 2007 and shall apply in respect of any distribution made on or after that date. 20

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

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

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (aA) of the definition of “**dividend cycle**” of the following subparagraph:

“(i) [**the day falling six months prior to the declaration of the said dividend]** the later date of the date on which that company was incorporated, formed or otherwise established or 1 July 1993; and”;

(b) by the substitution in subsection (1) for the words in paragraph (aA) of the definition of “**dividend cycle**” following subparagraph (ii) of the following words: 40

“and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section [**64C(2)] 64C(6); and”;**

(c) by the substitution in subsection (1) for paragraph (b) of the definition of “**dividend cycle**” of the following paragraph: 45

“(b) in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section [**64C(2).] 64C(6);”;**

(d) by the insertion in subsection (1) after the definition of “**dividend cycle**” of the following definition: 50

“**‘group of companies’** means ‘group of companies’ as defined in section 41; and”;

(e) by the substitution for subsection (2) of the following subsection: 55

“(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is

calculated at the rate of **[12,5] 10** per cent of the net amount, as determined in terms of subsection (3), of any dividend declared **[on or after 14 March 1996]** by any company which is a resident.”;

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

“(c) so much of any dividend declared in the course of the liquidation, winding up, deregistration or final termination of the corporate existence of a company, as is shown by the company to be a distribution of realised or unrealised profits derived by that company before that company became a resident whether or not those unrealised profits have been recognised in the accounts of the company”;

- (g) by the substitution in subsection (5)(f) for the words preceding subparagraph (i) of the following words:

“any dividend declared by a controlled group company as contemplated in the definition of ‘group of companies’ which accrues to a shareholder (as defined in Part III) of that company if—”;

- (h) by the substitution in subsection (5)(f) for subparagraph (i) of the following subparagraph:

“(i) that shareholder is a company forming part of the same group of companies as the company declaring the dividend and that dividend is taken into account in the determination of the profits of that shareholder;”;

- (i) by the substitution in subsection (5)(f) for the proviso and the further proviso of the following proviso:

“: Provided that this exemption shall not apply to the extent to which that dividend consists of any shares in that shareholder;”.

(2) Subject to subsection (3), subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any dividend declared on or after that date.

(3) Subsection (1)(f) comes into operation on 1 January 2009 and shall apply in respect of any dividend declared on or after that date.

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

60. (1) Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (k) of the following paragraph:

“(k) to any amount contemplated in subsection (2)(a), (b), (c), (d) or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any shareholder or any connected person in relation to the shareholder if that shareholder—

- (i) is a company that is a member of the same group of companies as the company which is deemed to have declared that dividend; and
(ii) has taken that deemed dividend into account in the determination of the profits of that shareholder to the extent that the company which is deemed to have declared that dividend has reduced its profits as a result of that dividend; and”.

(2) Subsection (1) is be deemed to have come into operation on 1 October 2007 and shall apply in respect of any amount distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available on or after that date.

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 17 of Act 104 of 1979, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998, section 82 of Act 45 of 2003, section 43 of Act 32 of 2004 and section 46 of Act 8 of 2007 5

61. (1) Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (i) of paragraph (d) of the definition of “**formula B**” of the following subparagraph: 10

“(i) the taxpayer’s own contributions to any pension funds, provident funds and retirement annuity funds of which he or she is or was a member and from which any lump sum benefits were or may be derived in consequence of or following upon his or her retirement or death on or after 15 March, 1961, including so much of the amounts paid into such funds for his or her benefit by other pension funds, provident funds or retirement annuity funds as represented his or her own contributions to such other funds and any amount so transferred as a result of an election made in terms of section 37D(1)(e)(iii) of the Pension Funds Act, 1956 (Act No. 24 of 1956); and” 15 20

(2) Subsection (1) is deemed to have come into operation on 13 September 2007 and shall apply in respect of any lump sum benefit received or accrued on or after that date.

Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as amended by section 42 of Act 28 of 1997, section 48 of Act 30 of 1998 and section and section 47 of Act 8 of 2007 25

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

“2. Subject to the provisions of paragraphs 2A, 2B and 2C, the amount to be included in the gross income of any person for any year of assessment in terms of paragraph (e) of the definition of ‘gross income’ in section 1 of this Act shall be— 30

(a) the aggregate of the amounts received by or accrued to such person during that year by way of lump sum benefits derived in consequence of or following upon his retirement or death, less the deductions permitted under the provisions of paragraph 5 of this Schedule; **[and]**

(b) the aggregate of any amounts deducted from the minimum individual reserve of that person during that year in terms of section 37D(1)(d) of the Pension Funds Act, 1956 (Act No. 24 of 1956), which aggregate amount shall be deemed to be a lump sum benefit received by or accrued to such person from or in consequence of membership of any pension fund, provident fund or retirement annuity fund, on the date of the deduction: Provided that so much of any tax payable as is due to the inclusion in the income of such person of any amount contemplated in this paragraph pursuant to any order contemplated in section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), may, to the extent that tax is attributable to an amount contemplated in section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), be recovered by such person from the person to whom or in whose favour such amount is paid or payable; and 35 40 45

(c) the aggregate of any other amounts received by or accrued to such person during that year by way of lump sum benefits from or in consequence of membership or past membership of any pension funds, provident funds or retirement annuity funds, less the deductions permitted under the provisions of paragraph 6 of this Schedule.” 50

(2) Subsection (1) is deemed to have come into operation on 13 September 2007 and shall apply in respect of any lump sum benefit received or accrued on or after that date.

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

63. (1) Paragraph 2B of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words: 5
 “For the purposes of paragraphs [2] 2(a) and 2A, where a court has made an order that any part of the pension interest of a member of a pension fund, provident fund or retirement annuity fund shall be paid to the former spouse of that member, as provided for in the Divorce Act, 1979 (Act No. 70 of 1979), the amount of that part is, to the extent that that amount is not deemed to have been received by or to have 10
accrued to the member in terms of paragraph 2(b), deemed to be an amount that accrues to the member on the date on which the pension interest, of which that amount forms part, accrues to that member”.

(2) Subsection (1) is deemed to have come into operation on 13 September 2007.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006 and section 54 of Act 8 of 2007 15 20 25

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

- (a) by the addition to paragraph (b) of the definition of “**personal service company**” of the word “or”; and
- (b) by the addition to paragraph (b) of the definition of “**personal service trust**” 30
of the word “or”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2007.

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

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

“(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way or remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(b) of the Second Schedule, deduct from the employees benefit or minimum individual reserve as contemplated in that paragraph, by way of employees’ tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee’s spouse, in respect of such liability of that spouse, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer 45 50 55

before the end of such month, within seven days after the day on which [he] that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.”.

(2) Subsection (1) is deemed to have come into operation on 13 September 2007.

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

66. (1) Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the proviso to subparagraph (3) of the following proviso: 10

“: Provided that no amount shall be so deducted or withheld in respect of any [payment contemplated in paragraphs 5(1)(c) or 6(2) of the Second Schedule that is received by or accrues to the employee on or before 10 November 2006 or such later date as the Minister may determine by Notice in the *Gazette*] lump sum benefit, other than any retirement fund lump sum benefit, which accrues to any person during any year of assessment if the taxable income (excluding any retirement fund lump sum benefit) of that person for the year of assessment immediately preceding that year does not exceed the tax threshold for that year.”. 15

(2) Subsection (1) comes into operation on 1 January 2009 and shall apply in respect of any lump sum benefit accrued on or after that date. 20

Amendment of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and by section 47 of Act 28 of 1997, section 19 of Act 34 of 2004 and amended by section 51 of Act 31 of 2005

67. Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 25

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

“the amount of that gain must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to that employee by the [employer] person by whom that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be.”; 30

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

“(2) Employees’ tax in respect of the amount of remuneration contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by that [employer] person from any consideration paid or payable by him or her to that employee in respect of the cession, or release of that right or the disposal of that equity instrument or qualifying equity share, as the case may be, or from any cash remuneration paid or payable by that [employer] person to that employee after that right has to the knowledge of that [employer] person been exercised, ceded or released or that equity instrument has to the knowledge of that [employer] person vested or that qualifying equity share has to the knowledge of that [employer] person been disposed of[.]”;

(c) by the insertion of the following proviso to subparagraph (2): 45

“: Provided that where that person—

(i) is an ‘associated institution’, as defined in paragraph 1 of the Seventh Schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year of assessment during which the gain contemplated in subparagraph (1) arises; and 50

(ii) is or will be unable, for the reason described in subparagraph (5), to deduct or withhold the amount of employees’ tax or part of it in respect of that gain during that year of assessment, that person and that employer must deduct or withhold from the remuneration payable by them to that employee during that year of assessment an aggregate amount equal to the employee’s tax payable in 55

respect of that gain and shall be jointly and severally liable for that employee's tax."'; and

- (d) by the substitution for subparagraphs (4), (5) and (6) of the following subparagraphs:

"(4) Before deducting or withholding employees' tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a) or (c), that person and [the] that employer must ascertain from the Commissioner the amount to be so deducted or withheld.

(5) If that person and that employer [is] are, by reason of the fact that the amount to be deducted or withheld by way of employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain arises, [he or she] they must immediately notify the Commissioner of the fact.

(6) Where an employee has under any transaction to which neither that person nor [the] that employer is [not] a party made any gain or an employee has disposed of any qualifying equity share as contemplated in subparagraph (1), that employee must immediately inform [the] that person and that employer thereof and of the amount of that gain."

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

68. (1) Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding the proviso to subparagraph (7) of the following words:

"No rental value shall be placed under this paragraph on any accommodation away from an employee's usual place of residence in the Republic provided by his employer while such employee is absent from his usual place of residence in the Republic for the purposes of performing the duties of his or her employment"; and

- (b) by the insertion after subparagraph (7) of the following subparagraph:

"(7A) No rental value shall be placed under this paragraph on any accommodation provided by an employer to an employee away from such employee's usual place of residence outside the Republic, for a period not exceeding 12 months from the date of arrival of that employee in the Republic, for the purpose of performing the duties of his or her employment: Provided that the preceding provisions of this subparagraph shall not apply if that employee was present in the Republic for a period exceeding 30 days during the period of 12 months immediately preceding that date of arrival."

- (2) Subsection (1) comes into operation on 1 March 2008.

Amendment of paragraph 10 of Seventh Schedule to Act 58 of 1962, as amended by section 36 of Act 30 of 2002 and section 30 of Act 9 of 2006

69. (1) Paragraph 10 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (d) of subparagraph (2) of the following item:

- "(d) any travel facility granted by an employer to the spouse or any minor child of an employee if—

(i) that employee is for the duration of the term of his or her employment stationed for purposes of the business of that employer at a specific place in the Republic further than 250 kilometers away from his or her [main] usual place of residence in the Republic [where he or she ordinarily resides];

(ii) that employee is required to spend more than 183 days during the relevant year of assessment at that specific place for purposes of the business of that employer; and

- (iii) that facility is granted in respect of travel between that employee's **[main] usual place of residence in the Republic [where he or she ordinarily resides]** and that specific place where the employee is so stationed."

(2) Subsection (1) comes into operation on 1 March 2008. 5

Amendment of paragraph 12B of Seventh Schedule to Act 58 of 1962, as inserted by section 60 of Act 31 of 2005 and amended by section 31 of Act 9 of 2006

70. Paragraph 12B of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion in subparagraph (3) after item (a) of the following item:

- "(aA) where the services are rendered or the medicines are supplied for purposes of complying with any law of the Republic;" 10

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

71. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (5)(a)(bb) for the words preceding (A) of the following words: 15

- "that person and that creditor are members of the same group of companies as defined in section 41 unless—"

(2) Subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any disposal on or after that date. 20

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

72. (1) Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 25

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

"(1) Where a person disposes of a share in a company **[within two years after the acquisition by that person of that share,]** that person must disregard so much of any capital loss resulting from the disposal **[to the extent of]** as does not exceed any extraordinary dividends received by or accrued to that person in respect of that share within **[that]** a period of two years prior to the disposal."; and 30

- (b) by the deletion of subparagraph (2).

(2) Subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any share disposed of on or after that date. 35

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

73. Paragraph 20 of Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 40

- (a) by the substitution in subparagraph (1)(h)(ii) for subitem (bb) of the following subitem:

"(bb) where an amount has been included in **[that]** any person's gross income in terms of paragraph (i) of the definition of "gross income" in section 1, the value placed on the asset under the Seventh Schedule for purposes of determining the amount so included in that person's gross income;" and 45

- (b) by the substitution in subparagraph (1)(h) for subitem (iii) of the following subitem: 50

"[(iii) (aa) **a right in a controlled foreign company held directly by a resident, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph (10) of that company and of any other controlled foreign company in** 55

which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section 10(1)(k)(ii)(cc); or

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

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

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

Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962, as amended by section 90 of Act 60 of 2001 and section 74 of Act 31 of 2005

74. Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(b) for the words preceding subitem (i) of the following words:

“the person who acquired the financial instrument of the same kind and of the same or equivalent quality must be treated as having acquired that financial instrument on the date on which the person who disposed of the financial instrument acquired the financial instrument that was disposed of at a cost equal to the total of—”.

Insertion of paragraph 42A into Eighth Schedule to Act 58 of 1962

75. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 42 of the following paragraph:

“Short term disposals and acquisitions of listed shares

42A. If a capital gain is determined in respect of the disposal by a person of a listed share in terms of an arrangement between a company and its shareholders, or any class of them, which has been sanctioned by the court in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973), and within a period of 90 days after the disposal that person acquires a share of the same kind and of the same or equivalent quality (hereinafter referred to as the ‘replacement share’)—

- (a) the share that was disposed of must be treated as having been disposed of for proceeds equal to the base cost thereof;
- (b) where the amount of expenditure incurred to acquire the replacement share is equal to or exceeds the amount of the capital gain which would have arisen were it not for the operation of item (a), the replacement share must be treated as having been acquired at a cost equal to the amount of that expenditure less the amount of that capital gain, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a);
- (c) where the amount of the capital gain that would have arisen were it not for the operation of item (a) exceeds the expenditure incurred to acquire the replacement share, that replacement share must be treated as having been acquired at no cost for purposes of paragraph 20 and the excess must, notwithstanding the provisions of item (a), be treated as a capital gain determined in respect of the disposal of the share contemplated in that item; and
- (d) that person must be treated as having acquired the replacement share on the date on which that person acquired the share that was disposed of.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2007 and shall apply in respect of any disposal on or after that date.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002 section 101 of Act 45 of 2003, section 75 of Act 31 of 2005 and section 51 of Act 33 of 2006

76. Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds in a currency other than currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that currency and that capital gain or capital loss must be translated **[in accordance with the provisions of section 25D]** to the currency of the Republic by applying the average exchange rate for the year of assessment in which that asset was disposed of or by applying the spot rate on the date of disposal of that asset.”;

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

“(a) where the currency of expenditure is actually incurred or denominated in the local currency, translate the proceeds into the local currency at the average exchange rate for that year of assessment during which that asset was disposed of and must translate the amount of the capital gain or capital loss into the currency of the Republic by applying the average exchange rate for that year of assessment;

(b) where the currency of disposal is received or accrued or denominated in the local currency, translate the expenditure which is

- allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency) and must translate the amount of the capital gain or capital loss into the currency of the Republic by applying the average exchange rate for that year of assessment; and”;
- (c) by the substitution in subparagraph (2)(c) for subitem (ii) of the following subitem: 10
- “(ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency at the average exchange rate for the year of assessment during which the asset was disposed of, and must translate the amount of the capital gain or capital loss **[in accordance with the provisions of section 25D]** into the currency of the Republic by applying the average exchange rate for that year of assessment.”; and 15
- (d) by the substitution in subparagraph (4) for items (i) and (ii) of the following items: 20
- “(i) the proceeds into the currency of the Republic **[in accordance with the provisions of section 25D]** at the average exchange rate for the year of assessment in which that asset was disposed of or at the spot rate on the date of disposal of that asset; and 25
- (ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the currency of the Republic **[in accordance with section 25D]** at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate [or the average exchange rate, as the case may be, for the year of assessment during which] on the date on which that expenditure was incurred;”. 30

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

77. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 35
- (a) by the substitution in subparagraph (2) for the words preceding item (i) of the following words: 40
- “**[A]** Subject to subparagraph (5), a person must disregard any capital gain or capital loss determined in respect of the disposal of any interest in the equity share capital of any foreign company (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)), if”; and
- (b) by the addition of the following subparagraphs: 45
- “(5) A person must disregard any capital gain or capital loss determined in respect of any capital distribution contemplated in paragraph 76 or 77 received by or accrued to that person from a ‘foreign company’ as defined in section 9D where that person (in the case of a company, together with any other company in the same group of companies as that person) holds at least 20 per cent of the total equity share capital in that company: Provided that— 50
- (a) in determining the total equity share capital of a company, there shall not be taken into account any share which would have constituted a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and 55
- (b) this subparagraph does not apply in respect of any distribution which forms part of any transaction, operation or scheme in terms of which any capital gain is disregarded while any corresponding expenditure is taken into account by that person or any connected person in relation to that person in determining the liability for tax 60

of that person or connected person, as the case may be, in terms of this Act.

(6) The provisions of this paragraph shall not apply in respect of any capital gain or capital loss determined in respect of—

- (a) the disposal of any interest in the equity share capital of any portfolio contemplated in paragraph (e) of the definition of ‘company’ in section 1; and
- (b) any distribution contemplated in subparagraph (5) by any portfolio contemplated in item (a).”

(2) Subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any distribution on or after that date.

Amendment of paragraph 65 of Eighth Schedule to Act 58 of 1962, as amended by section 103 of Act 60 of 2001, section 106 of Act 45 of 2003 and section 27 of Act 16 of 2004

78. Paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

“(4) Where a replacement asset contemplated in subparagraph (1) constitutes a depreciable asset, the person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (3), as bears to the total amount of that disregarded gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any [capital] deduction or allowance allowed in that year in respect of the replacement asset bears to the total amount of the [capital] deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.”

Amendment of paragraph 66 of Eighth Schedule to Act 58 of 1962, as amended by section 33 of Act 9 of 2001, section 107 of Act 45 of 2003 and section 67 of Act 8 of 2007

79. Paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (a) of the following item:
 - “(a) that asset qualified for a [capital] deduction or allowance in terms of section 11(e), 11D(2), 12B, 12C, 12DA, 12E, 14, [or] 14bis or 37B”;
- (b) by the substitution in subparagraph (1) for item (c) of the following item:
 - “(c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the “replacement asset or assets”), all of which will qualify for a capital deduction or allowance in terms of section 11(e), 11D(2), 12B, 12C, [or] 12DA, 12E or 37B”;
- (c) by the substitution for subparagraph (4) of the following subparagraph:
 - “(4) A person must treat as a capital gain for a year of assessment so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded capital gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any deduction or allowance allowed in that year in terms of section 11(e), 11D(2), 12B, 12C, [or] 12DA, 12E or 37B in respect of the replacement asset bears to the total amount of the deduction or allowance in terms of that section (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.”

Amendment of paragraph 67 of Eighth Schedule to Act 58 of 1962, as amended by section 104 of Act 60 of 2001, section 108 of Act 45 of 2003 and section 57 of Act 20 of 2006

- 80.** (1) Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5
- (a) by the deletion in subparagraph (1)(b) of the word “and” at the end of item (iii);
 - (b) by the substitution in subparagraph (1)(b) for item (iv) of the following item:
 - “(iv) used that asset in the same manner that it was used by the transferor and the executor of the deceased estate of the transferor[.]; and”; 10
 - and
 - (c) by the addition to subparagraph (1)(b) of the following item:
 - “(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.” 15
- (2) Subsection (1) is deemed to come into operation on 30 October 2007 and shall apply in respect of any asset disposed of on or after that date.

Amendment of paragraph 67A of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 60 of 2001, and amended by section 93 of Act 74 of 2002 and section 109 of Act 45 of 2003 20

- 81.** (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph: 25
- “(3) For the purposes of subparagraph (2) proceeds **[include] are limited** to the amount of any cash received and the market value on the date of acquisition of any assets acquired by a holder of a participatory interest from the collective investment scheme prior to **[the disposal of his or her participatory interest] 1 October 2007** to the extent that that amount and that market value do not constitute gross income in the hands of that holder.”
- (2) Subsection (1) is deemed to have come into operation on 1 October 2007. 30

Insertion of paragraph 67AB into Eighth Schedule of Act 58 of 1962

- 82.** (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 67A of the following paragraph:

“Disposal and part-disposal of interests in collective investment schemes in property 35

67AB. (1) A holder of a participatory interest contemplated in paragraph 67A must be treated as having disposed of part of that participatory interest—

- (a) on 1 July 2011 if any cash has been received or assets have been acquired by that holder in the manner contemplated in subparagraph (3) of that paragraph before 1 October 2007 and that participatory interest has not been disposed of on or before 1 July 2011 by that holder; and 40
- (b) in any other case, on the date of receipt of any cash or acquisition of any assets received or acquired by the holder on or after 1 October 2007, to the extent that the amount of that receipt does not constitute gross income in the hands of that holder. 45

(2) For purposes of paragraph 33(1) the market value of the part disposed of must be treated as being equal to the amount of the cash so received or the market value of the assets so acquired.” 50

- (2) Subsection (1) is deemed to have come into operation on 1 October 2007.

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

83. Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “**capital distribution**” for paragraph (b) of the following paragraph: 5

“(b) [that] constitutes a dividend which is exempt from secondary tax on companies by reason of section 64B(5)(c);”.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act 16 of 2004 and section 81 of Act 31 of 2005 10

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

(a) by the substitution in subparagraph (1) for item (b) of the following item: 15
 “(b) on or after valuation date but before 1 October 2007, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.”; and

(b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words: 20
 “Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a capital distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that shareholder in respect of those shares on or after valuation date but before 1 October 2007, the weighted average base cost of those shares must be determined by—” 25

(2) Subsection (1) is deemed to have come into operation on 1 October 2007.

Insertion of paragraph 76A into Eighth Schedule to Act 58 of 1962

85. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 76 of the following paragraph: 30

“Disposal and part-disposal of shares

76A. (1) A shareholder must be treated as having disposed of part of a share—

(a) except where paragraph 76(2) applies, on 1 July 2011 if a capital distribution contemplated in paragraph 76(1)(b) has been received by or accrued to that shareholder on or after valuation date but before 1 October 2007 in respect of a share not disposed of on or before 1 July 2011; and 35

(b) in any other case, on the date of receipt or accrual of a capital distribution of cash or an asset *in specie* received by or accrued to that shareholder on or after 1 October 2007. 40

(2) If paragraph 76(2) applies and the base cost of those shares is a negative amount on 31 December 2010—

(a) that shareholder must be treated as having a capital gain equal to that negative amount on 1 July 2011; and 45

(b) the base cost of those shares on 31 December 2010 must be treated as nil.

(3) For purposes of paragraph 33(1) the market value of the part disposed of under this paragraph must be treated as being equal to the amount of the cash or the market value of the asset *in specie* received or accrued by way of a capital distribution.” 50

(2) Subsection (1) is deemed to have come into operation on 1 October 2007.

Repeal of paragraph 79 of Eighth Schedule to Act 58 of 1962

86. (1) Paragraph 79 of the Eighth Schedule to the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 October 2007 and shall apply in respect of any distribution on or after that date.

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Amendment of paragraph 1 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 70 of Act 8 of 2007

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

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

“‘**exploration**’ means the acquisition, processing and analysis of geological and geophysical data or other related activity for purposes of defining a trap to be tested by drilling together with well drilling, logging and testing (including extended well testing) up to and including the [well] field appraisal stage;”;

(b) by the deletion of the word “and “ at the end of the definition of “**oil and gas income**”; and

(c) by the substitution for the definition of “**oil and gas right**” of the following definition:

“‘**oil and gas right**’ means any reconnaissance permit, technical co-operation permit, exploration right, or production right as defined in section 1 of [as contemplated in Schedule I and as of] the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any right or interest therein;”.

(2) Subsection (1) is deemed to have come into operation on 2 November 2006 and shall apply in respect of any year of assessment commencing on or after that date.

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Amendment of paragraph 7 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 75 of Act 8 of 2006

88. (1) Paragraph 7 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of the word “and” at the end of subparagraph (2)(i)(A) for the word “or”.

(2) Subsection (1) is deemed to have come into operation on 2 November 2006 and shall apply in respect of any year of assessment commencing on or after that date.

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Amendment of paragraph 8 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006

89. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 8 of the following paragraph:

“8. (1) (a) The Minister may enter into a binding agreement with any oil and gas company in respect of an oil and gas right held by that company, and that agreement will guarantee that the provisions of this Schedule (as at the date on which the agreement was concluded) will apply in respect of that right as long as the right is held by the company.

(b) In lieu of subparagraph (a), the Minister may enter into a binding agreement with any company in anticipation of an oil and gas right to be acquired by that company, and that agreement will guarantee that the provisions of this Schedule (as at the date on which the oil and gas right is granted) will apply in respect of that right as long as that right is held by the company: Provided that this binding agreement will have no force and effect if the oil and gas right is not granted within one year after the agreement is concluded.

(2) (a) In the case of a disposal of an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in

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- respect of that right may, as part of that disposal, assign all of its fiscal stability rights in terms of that agreement relating to the exploration right disposed of to any other oil and gas company.
- (b) In the case of a disposal of a production right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), an oil and gas company that has concluded an agreement as contemplated in subparagraph (1) in respect of that right disposed of may, as part of that disposal, assign all its fiscal stability rights in terms of that agreement relating to the production right disposed of to another oil and gas company if that other company is a company within the same group of companies as the oil and gas company transferring the fiscal stability right at the time the agreement is concluded.
- (3) If an oil and gas company holding a participating interest in an oil and gas right has concluded an agreement contemplated in subparagraph (1), the terms and conditions of that agreement will apply to all participating interests subsequently held by that company in that oil and gas right.
- (4) An oil and gas company that has concluded an agreement contemplated in subparagraph (1) in respect of an oil and gas right may at any time unilaterally terminate the agreement in respect of that oil and gas right so held with effect from the commencement of the year of assessment immediately following the notification date of the termination.
- (5) The portion of taxable income and profits of an oil and gas company derived from all the oil and gas rights governed by the version of the Schedule applicable to an oil and gas right covered by a binding agreement referred to in subparagraph (1), must be determined in terms of that version of the Schedule.
- (6) If the State fails to comply with the terms of the agreement contemplated in subparagraph (1) and that failure has a material adverse economic impact on the taxation of income or profits of the oil and gas company that is party to that agreement, that oil and gas company is entitled to compensation for the loss of market value caused by that failure (and interest at the prescribed rate calculated on the compensation from the date of non-compliance) or to an alternative remedy that otherwise eliminates the full impact of that failure.
- (7) For purposes of this paragraph—
- (a) an “**oil and gas right**” means an exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any right or interest therein; and
- (b) an exploration right, a renewal of that exploration right and an initial production right converted from any exploration right or renewal thereof held by a company will all be deemed to be one and the same oil and gas right in the hands of that company to the extent that those rights relate to the same geographical area.”.
- (2) Subsection (1) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any agreement entered into on or after that date.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 1 of Act 32 of 2004, section 85 of Act 31 of 2005 and section 7 of Act 21 of 2006

90. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended by—

- (a) the substitution for the definition of “customs duty” of the following definition:

- “**customs duty**” means any duty leviable under Part 1 of Schedule No. 1 [(except Parts 3, 4 and 5 thereof)] or Schedule No. 2 on goods imported into the Republic;”;
- (b) the substitution for the definition of “excisable goods” of the following definition: 5
 “**excisable goods**” means any goods specified in Part 2 of Schedule No. 1 [**which have been**] imported into or manufactured in the Republic;”;
- (c) the substitution for the definition of “excise duty” of the following definition: 10
 “**excise duty**” means any duty leviable under Part 2 of Schedule No. 1 on any goods imported into or manufactured in the Republic;” and 10
- (d) the substitution for the definition of “manufacture” of the following definition:
 “**manufacture**”, when used as a noun, includes, in the discretion of the Commissioner, any process—
 (a) in the manufacture or assembly of any excisable goods, [**or**] environmental levy goods, fuel levy goods or Road Accident Fund levy goods; 15
 (b) in the conversion of any goods into excisable goods, environmental levy goods, [**or**] fuel levy goods or Road Accident Fund levy goods;
 (c) whereby the dutiable quantity or value of any [**imported**] excisable goods, [**specified in Section B of Part 2 of Schedule No. 1 excisable goods**] environmental levy goods, [**or**] fuel levy goods or Road Accident Fund levy goods is increased in any manner; 20
 (d) in the recovery of excisable goods, environmental levy goods, [**or**] fuel levy goods or Road Accident Fund levy goods from excisable goods or any other goods; or 25
 (e) in the packing or measuring off of any [**imported**] excisable goods specified in [**Section B of**] Part 2 of Schedule No. 1 [**excisable goods**] environmental levy goods, [**or**] fuel levy goods, or Road Accident Fund levy goods, 30
 and, when used as a verb, has a corresponding meaning; and
 “**manufacturer**” has a corresponding meaning;”.

(2) Subsection (1) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 43 of Act 19 of 2001, section 125 of Act 60 of 2001, section 136 of Act 45 of 2003, section 67 of Act 32 of 2004, section 12 of Act 9 of 2005 and section 64 of Act 20 of 2006 35 40

91. (1) Section 44 of the Customs and Excise Act, 1964, is hereby amended by—

- (a) the substitution for subsection (7) of the following subsection: 45
 “(7) Notwithstanding anything to the contrary in this section contained, no importer shall be granted a refund of customs duty, excise duty, surcharge or fuel levy paid in respect of any goods missing from any individual imported package, if such customs duty, excise duty, surcharge or fuel levy, each taken separately, does not exceed twenty-five rand.”; and
- (b) the substitution of subsection (8A): 50
 “(8A) Notwithstanding anything to the contrary in this Act contained, any person who owns, purchases, removes, receives, takes, delivers or deals with or in any imported goods or excisable goods [**or fuel levy goods**] which should have been duly entered[, **in terms of any agreement**] in [**any territory with the government of which such an agreement has been concluded under section 51,**] any other Member State of SACU, shall be liable for the duty on such goods brought into the Republic from such [**territory**] State, and if the question arises whether such goods have been duly entered, it shall be presumed, unless the contrary is proved, that such goods have not been so entered, and such goods shall be subject to the provisions of this Act as if they were goods 55 60

which have, contrary to the provisions of subsection 47A(1), not been duly entered in the Republic.”.

(2) Subsection (1)(a) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 47B of Act 91 of 1964, as inserted by section 17 of Act 84 of 1987 and substituted by section 5 of Act 98 of 1993, repealed by section 11 of Act 27 of 1997, re-inserted by section 59 of Act 30 of 2000, amended by section 40 of Act 12 of 2003 and section 13 of Act 9 of 2005 5

92. Section 47B of the Customs and Excise Act, 1964, is hereby amended by—

(a) the substitution in subsection (2) for paragraph (c) of the following paragraph: 10

“(c) (i) The chargeable passenger shall be liable for the tax which shall be collected by the operator or his agent.

(ii) The operator or his or her agent shall be entitled to collect the tax from a chargeable passenger—

(aa) at the time of the acquisition by that chargeable passenger of a ticket for the flight; or 15

(bb) prior to the embarkation of that chargeable passenger on a flight; and

(iii) Where the tax has not been collected at the time contemplated in subparagraph (ii), an operator or his or her agent shall be liable for the tax and may recover the uncollected tax from the chargeable passenger.”; 20

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

“(e) Subject to the provisions of this section and except for the purposes of any customs union agreement [**concluded under**] contemplated in section [51] 49, the tax shall be deemed to be a duty leviable under this Act.”; and 25

(c) the insertion after subsection (8) of the following subsection:

“(9) (a) Notwithstanding anything to the contrary contained in this section, there shall be no liability for any underpayment of tax or failure to collect tax— 30

(i) after a period of two years from the date any account was or should have been rendered in respect of such tax; or

(ii) where such underpayment or failure was discovered as a result of, during the course of, or following upon, an inspection and that underpayment or failure occurred on a date earlier than two years prior to the date on which such inspection commenced: 35

Provided that such liability shall, subject to paragraph (c), not cease even if an underpayment is discovered after an earlier assessment and payment of an amount in respect of any inspection during the period concerned, where such underpayment is the result of— 40

(aa) fraud;

(bb) misrepresentation;

(cc) non-disclosure of any material facts; or

(dd) any false declaration for the purposes of this Act. 45

(b) Where any period is prescribed in this Act for books, accounts or other documents in whatever form to be kept available for production to or inspection by an officer, any such period shall, subject to the provisions of paragraph (c), be calculated from a date prior to the date on which production is demanded or the inspection commences. 50

(c) Except where the Commissioner may otherwise determine in exceptional circumstances, where any underpayment arises from the circumstances contemplated in the proviso to paragraph (a), there shall be no limitation on the period of liability for any underpayment of tax or failure to collect tax or the period for which any books, accounts or any other documents, in whatever form available, are required to be produced to or may be inspected by an officer.”. 55

Amendment of section 65 of Act 91 of 1964 as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of 1978, section 7 of Act 110 of 1979, section 13 of Act 86 of 1982, section 8 of Act 101 of 1985, section 8 of Act 52 of 1986, section 9 of Act 68 of 1989, section 48 of Act 45 of 1995, section 5 of Act 44 of 1996, section 59 of Act 53 of 1999, section 128 of Act 60 of 2001, section 144 of Act 45 of 2003 and section 70 of Act 32 of 2004 5

93. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended by—
- (a) the substitution for the heading of the following heading:

“Value for [customs] duty purposes on any goods imported into the Republic.”; 10
 - (b) the substitution for subsection (3) of the following subsection:

“(3) [Unless the context otherwise indicates] Subject to subsection (8), any reference in this Act to customs value or to value for duty purposes, in relation to imported goods, shall be deemed to be a reference to value for customs duty purposes contemplated in subsection (1).”; 15
 - (c) the substitution in subsection (4)(c) for subparagraph (i) of the following subparagraph:

“(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that [an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or] such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner on good cause shown may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”; 20
 - (d) the substitution in subsection (4)(c)(ii) for item (cc) of the following item: 30

“(cc) any amendment of a determination or new determination is made effective under subsection (5) or [as contemplated in section 77F] as a result of the finalisation of any procedure contemplated in Chapter XA.”;
 - (e) the substitution in subsection (4)(c) for subparagraph (iii) of the following subparagraph: 35

“(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) [or sections 77E or 77F] or as a result of the finalisation of any procedure contemplated in Chapter XA, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of [paragraph (c)(i)] subparagraph (i) for any period during which such determination remained in force.”; 40
 - (f) the substitution in subsection (5)(a) for subparagraph (ii) of the following subparagraph: 45

“(ii) [except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged before it has been considered] except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”; 50
 - (g) the substitution in subsection (7) for the wording following paragraph (b) of the following wording: 55

“there shall be no liability for any underpayment of customs duty or excise duty on any goods imported into the Republic, where such underpayment is due to the acceptance of a bill of entry bearing an 60

incorrect [**customs value**] value for duty purposes, after a period of two years from the date of entry of such goods.”;

(h) the substitution for subsection (8) of the following subsection:

“(8) Notwithstanding the provisions of subsections (1) and (4), the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 shall, in respect of imported goods [(**other than goods entered in terms of item 412.18 of Schedule No. 4**)], be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 and any excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.”; and

(i) the deletion in subsection (8) of paragraph (b).

(2) Paragraphs (a) and (b), and (g) to (i) of subsection (1) come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 69 of Act 91 of 1964 as amended by section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 9 of Act 101 of 1985, section 7 of Act 69 of 1988, section 12 of Act 68 of 1989, section 1 of Act 111 of 1991, section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, section 6 of Act 44 of 1996, section 61 of Act 53 of 1999, section 49 of Act 19 of 2001, section 129 of Act 60 of 2001, section 145 of Act 45 of 2003 and section 71 of Act 32 of 2004

94. (1) Section 69 of the Customs and Excise Act, 1964, is hereby amended by—

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

“**Value for excise duty purposes on any goods manufactured in the Republic**”;

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

“(b) Unless the context otherwise indicates, any reference in this Act to value for excise duty purposes in relation to goods manufactured in the Republic shall be deemed to be a reference to the value for excise duty purposes contemplated in this section.”;

(c) the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:

“(i) For the purpose of assessing the excise duty on any goods manufactured in the Republic and specified in Section A of Part 2 of Schedule No. 1 [(**other than goods specified in items 117.01.10 and 117.05 to 117.30**)], the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 66(2)(a), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding the non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1, fuel levy or any value-added tax payable on such goods.”;

(d) the deletion in subsection (2)(a) of subparagraph (ii);

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

“(c) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that [**an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or**] such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”;

(f) the substitution in subsection (3)(d) for subparagraph (iii) of the following subparagraph:

“(iii) any amendment of a determination or new determination is made effective under subsection (4) or [**as contemplated in section 77F**] 60

as a result of the finalisation of any procedure contemplated in Chapter XA.”;

- (g) the substitution in subsection (3) for paragraph (e) of the following paragraph:
 “(e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) or [section 77E or 77F] as a result of the finalisation of any procedure contemplated in Chapter XA the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (c) for any period during which such determination remained in force.”; and

- (h) the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:

“(ii) **[except when an internal administrative appeal has been lodged in terms of Part A of Chapter XA or if lodged, before it has been considered]** except where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”.

- (2) Paragraphs (a) to (d) of subsection (1) come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004, section 92 of Act 31 of 2005 and section 70 of Act 20 of 2006

95. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended by—

- (a) the substitution in subsection (1) for paragraphs (a) to (d) of the following paragraphs:

“(a) any imported goods described in Schedule No. 3 shall be admitted under rebate of any customs duties or excise duty applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of Schedule No. 3 in which they are specified;

(b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any customs duties, excise duty, fuel levy or Road Accident Fund levy applicable in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, to the extent stated in, and subject to compliance with the provisions of the item of Schedule No. 4 in which such goods are specified;

(c) a drawback or a refund of the customs duty, excise duty, surcharge, fuel levy and Road Accident Fund levy actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified; and

(d) in respect of any excisable goods or fuel levy goods manufactured in the Republic described in Schedule No. 6, a rebate of the excise

duty specified in Part 2 of Schedule No. 1 or of the fuel levy and of the Road Accident Fund levy specified respectively in Part 5A and Part 5B of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty, fuel levy or Road Accident Fund levy actually paid at the item of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6:

Provided that any rebate, drawback or refund of Road Accident Fund levy as contemplated in paragraph (b), (c) or (d), shall only be granted as expressly provided in Schedule No. 4, 5 or 6 in respect of any item of such Schedule.”;

- (b) the substitution in subsection (1A)(a) for the words following subparagraph (iii) of the following words:
 “shall be granted in accordance with the provisions of this section and of item 670.04 of Schedule No. 6 to the extent stated in **[those items]** that item.”;
- (c) the substitution in subsection (1A)(b) for subparagraph (i) of the following subparagraph:
 “(i) has purchased and used such fuel in accordance with the provisions of this section and the said **[items]** item of Schedule No. **[5 or] 6**; and”;
- (d) the substitution in subsection (1A) for paragraph (c) of the following paragraph:
 “(c) the Commissioner may withdraw money from the National Revenue Fund for refunding the amount of such Road Accident Fund levy as if it were a fuel levy leviable and paid under this Act and refundable in terms of the said **[items]** item of Schedule No. **[5 or] 6**.”;
- (e) the substitution in subsection (1A)(d) for subparagraph (i) of the following subparagraph:
 “(i) pay any such refund upon receipt of a duly completed return from any person who has purchased distillate fuel for use as contemplated in the said item of Schedule No. **[5 or] 6**.”;
- (f) the substitution in subsection (1A) for paragraph (e) of the following paragraph:
 “(e) any such payment or set-off by the Commissioner shall be deemed to be a provisional refund for the purpose of this section and the said **[items]** item of Schedule No. **[5 or] 6** subject to the production of proof by the user referred to in subsection (1C)(b) at such time and in such form as the Commissioner may determine that the distillate fuel has been—
 (i) purchased as claimed on the application for a diesel refund; and
 (ii) used in accordance with the provisions of this section and the said **[items]** item of Schedule No. **[5 or] 6**.”;
- (g) the substitution in subsection (1C)(a) for subparagraph (iii) of the following subparagraph:
 “(iii) delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said **[items]** item of Schedule No. **[5 or] 6**.”;
- (h) the substitution in subsection (1C)(b) for the words preceding subparagraph (i) of the following words:
 “For the purposes of this section and the said **[items]** item of Schedule No. **[5 or] 6**—”;

- (i) the substitution in subsection (1C)(b) for subparagraph (i) of the following subparagraph:
 “(i) **“user”** shall mean, according to the context and subject to any note in the said Schedule No. [5 or] 6, the person registered for a diesel refund as contemplated in subsection (1A);”;
- (j) the substitution in subsection (1C)(c) for subparagraphs (i), (iii) and (iv) of the following subparagraphs:
 “(i) The refunds specified in the said [items] item of Schedule No. [5 or] 6 shall apply to fuel purchased on or after the date the amendment contemplated in section 75(15) comes into operation.
 (iii) The extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. [5 or] 6 in operation on the date of issue of the invoice concerned, referred to in subsection (4A)(c).
 (iv) If the extent of such refund is amended and for any reason any liability to repay any refund of such levies in respect of any quantity of fuel which the user may incur in respect of the use of such fuel cannot be assessed or the amount of the levies refundable to such user in terms of any item of Schedule No. [5 or] 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Commissioner according to the information at his disposal.”;
- (k) the substitution in subsection (1C)(d) for subparagraph (i) of the following subparagraph:
 “(i) Any user who has been granted such a provisional refund shall, in relation to the purchase and use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed in the notes to item [640.03] 670.04, with a declaration in such form and supported by such documents as may be prescribed in such notes.”;
- (l) the substitution in subsection (1C)(d) for subparagraph (ii) of the following subparagraph:
 “(ii) Any user who fails to comply with the provisions of [paragraph (d)(i)] subparagraph (i) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the said [items] item of Schedule No. [5 or] 6 and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable in terms of section 76A.”;
- (m) the substitution in subsection (1C)(e) for subparagraph (i) of the following subparagraph:
 “(i) If the amount of the provisional refund paid to the user concerned was not duly refundable or exceeds the amount refundable in terms of the said [items] item of Schedule No. [5 or] 6, any such amount or the excess shall be paid by that user upon demand by the Commissioner.”;
- (n) the substitution in subsection (4A)(e)(i) for the words following item (cc) of the following words:
 “shall, in addition to any other liability incurred in terms of this Act in respect of the fuel to which such failure relates, be liable, as the Commissioner may determine, for payment of an amount not exceeding the levies refunded on such fuel, unless it is shown by the user within 30 days of the date of any demand for payment of such amount in terms of this section that the fuel has been used in accordance with the provisions of the said [items] item of Schedule No. [5 or] 6.”; and
- (o) the substitution in subsection (4A)(f)(ii) for item (cc) of the following item:
 “(cc) fraudulently claims or receives any payment in respect of any refund provided for in this subsection and the said [items] item of Schedule No. [5 or] 6.”.

(2) (a) Subsection (1)(a) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)(k) is deemed to have come into operation on 1 April 2006.

Amendment of section 92 of Act 91 of 1964 as amended by section 11 of Act 98 of 1993, section 61 of Act 45 of 1995 and section 70 of Act 30 of 1998

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96. Section 92 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any [**fine or**] penalty recovered under this Act shall be paid to the Controller in the area where such [**fine or**] penalty is recovered, and shall be paid by him into the national Revenue Fund, and the proceeds of sale of anything forfeited, or seized and condemned under this Act shall also be paid into the said fund[**: Provided that the Commissioner may withhold a sum not exceeding one third of any such fine, penalty or proceeds which he may then award to any person, excluding any officer or person employed by the South African Revenue Service, by whose means or information the fine or penalty or forfeiture was imposed or the seizure made**].”

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Amendment of section 94 of Act 91 of 1964

97. Section 94 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) Without derogation from any powers conferred upon the Commissioner any penalty [, **fine**] or forfeiture incurred under this Act may be recovered either by civil action or upon criminal prosecution in any court of competent jurisdiction, and in the case of a criminal prosecution the court passing sentence may also make an order regarding any unpaid duty or charge and impose civil penalties or enforce forfeiture.”.

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Amendment of section 114 of Act 91 of 1964, as substituted by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, as inserted by section 36 of Act 112 of 1977, as substituted by section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990, section 34 of Act 34 of 1997, section 71 of Act 53 of 1999, section 140 of Act 60 of 2001, section 112 of Act 74 of 2002, section 94 of Act 31 of 2005 and section 73 of Act 20 of 2006

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98. Section 114 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1)(b)(iv) for the words preceding item (aa) of the following words:

“Where, in addition to any amount of duty which is due or is payable by any person in terms of this Act, any [**fine,**] penalty, forfeiture or interest is incurred under this Act and is payable by such person, any payment made by that person or any amount recovered pursuant to any sale of such goods as contemplated in this section shall be utilised by the Commissioner to discharge such payment or amount in the order of—”.

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Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989, section 55 of Act 19 of 2001, section 43 of Act 12 of 2003, section 156 of Act 45 of 2003, section 38 of Act 16 of 2004, section 76 of Act 32 of 2004, section 6 of Act 10 of 2005 and section 96 of 31 of 2005

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99. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended by the deletion in subsection (1) of paragraphs (h), (hA) and (hB).

(2) Subsection (1) comes into operation on 1 July 2008.

Amendment of section 8 of Act 77 of 1968, as amended by section 77 of Act 32 of 2004

100. (1) Section 8 of the Stamp Duties Act, 1968, is hereby amended by the deletion in subsection (1) of paragraphs (c) and (d).

(2) Subsection (1) comes into operation on 1 July 2008. 5

Repeal of section 23 of Act 77 of 1968

101. (1) Section 23 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) comes into operation on 1 July 2008.

Repeal of section 28C of Act 77 of 1968

102. (1) Section 28C of the Stamp Duties Act, 1968, is hereby repealed. 10

(2) Subsection (1) comes into operation on 1 July 2008.

Amendment of item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 19 of Act 46 of 1996, section 21 of Act 27 of 1997, section 86 of Act 30 of 1998, section 18 of Act 31 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000, section 42 of Act 5 of 2001, section 147 of Act 60 of 2001, section 56 of Act 30 of 2002, section 113 of Act 74 of 2002, section 163 of Act 45 of 2003, section 91 of Act 32 of 2004, section 18 of Act 9 of 2005, section 100 of Act 31 of 2005, section 39 of Act 9 of 2006 and section 75 of Act 20 of 2006 15

103. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subparagraph (x) for item (i) of the following item:

“(i) in terms of [a company formation] an asset-for-share transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);”;

(b) by the deletion in subparagraph (x) of item (ii).

(2) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(3) Subsection (1) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date. 35

(4) Subsection (2) comes into operation on 1 July 2008.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006 and section 81 of Act 8 of 2007 40

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

(a) by the substitution in the definition of “exported” for paragraph (a) of the following paragraph:

“(a) consigned or delivered by the vendor to the recipient at an address in an export country [as evidenced by documentary proof acceptable to the Commissioner]; or”;

- (b) by the substitution in the definition of “**exported**” for the words following paragraph (c) of the following paragraph:

“(d) removed from the Republic by the recipient for conveyance to an export country **[in accordance with the provisions of an export incentive scheme approved by the Minister]**,

in accordance with any regulation made in terms of this Act;”;

- (c) by the substitution in the definition of “**input tax**” for paragraph (b) of the following paragraph:

“(b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic (other than a person or diplomatic or consular mission of a foreign country established in the Republic that was granted relief, by way of a refund of tax as contemplated in section 68) of any second-hand goods situated in the Republic: Provided that where such second-hand goods consist of—”.

- (2) Paragraphs (a) and (b) of subsection (1) come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006 and section 81 of Act 20 of 2006

- 105.** (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

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

“the supplier has supplied the goods (being movable goods) in terms of a sale or installment credit agreement and the goods have been exported—”;

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

“(i) **[the supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of “exported” in section 1]** as contemplated in the regulation referred to in the definition of ‘exported’ in section 1; or”;

- (c) by the substitution in subsection (1)(a)(ii) for the words preceding item (aa) of the following words:

[the goods have been exported] by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in **[Part 2 of an export incentive scheme]** the regulation referred to in **[paragraph (d) of]** the definition of ‘exported’ in section 1: Provided that—”;

- (d) by the substitution in subsection (1)(a)(ii) for item (bb) of the following item:

“(bb) where the goods have been removed from the Republic by the recipient in accordance with the provisions of **[an export incentive scheme]** the regulation referred to in **[paragraph (d) of]** the definition of ‘exported’ in section 1, such tax shall be refunded to the recipient in accordance with the provisions of section 44(9); or”.

- (2) Subsection (1) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006 and section 83 of Act 20 of 2006 5

106. Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for the first proviso of the following proviso:

“Provided that—

- (i) where any vendor is entitled under the preceding provisions of this subsection to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to a later tax period which ends no later than five years after the end of the tax period during which—
 - [(i)](aa) the tax invoice for that supply should have been issued as contemplated in section 20(1); 15
 - [(ii)](bb) goods were entered for home consumption in terms of the Customs and Excise Act;
 - [(iii)](cc) second-hand goods were acquired or goods as contemplated in section 8(10) were repossessed; 20
 - [(iv)](dd) the agent should have notified the principal as contemplated in section 54(3); or
 - [(v)](ee) in any other case, the vendor for the first time became entitled to such deduction **[and for which a tax invoice is not required for the claiming of such deduction]**, notwithstanding the documentary proof that the vendor must be in possession of in terms of subsection (2) of this section; and 25
- (ii) the said period of five years contemplated in proviso (i) of this section shall be limited to six months prior to the tax period in which the deduction is made, where the Commissioner is satisfied that the deduction was not permissible in accordance with the practice generally prevailing, 30
and to the extent that it has not previously been deducted by the vendor under this subsection:”.

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996 and section 53 of Act 27 of 1997, as substituted by section 177 of Act 60 of 2001, as amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R111 in *Government Gazette* 24274 of 2003, section 189 of Act 45 of 2003, sections 52—55 of Act 16 of 2004, section 108 of Act 32 of 2004, sections 111-113 of Act 31 of 2005, by sections 52-53 of Act 9 of 2006 and by section 89 of Act 20 of 2006 35 40

107. Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph 7 for subparagraph (a) of the following subparagraph: 45

“(a) goods and foodstuffs set forth in Part A and Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part; or”.

Amendment of Schedule 2 of Act 89 of 1991, as amended by section 49 of Act 136 of 1991, paragraph 25 of Government Notice 2695 of 8 November 1991, section 44 of Act 136 of 1992, section 45 of Act 97 of 1993, section 33 of Act 20 of 1994, section 104 of Act 30 of 1998, section 73 of Act 19 of 2001 and section 56 of Act 16 of 2004 50

108. Schedule 2 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in Part B for Item 5 of the following Item:

“Item 5 Dried silo screened mealies or dried mealies **[for human consumption]** not further prepared or processed or packaged as seed, but excluding pop corn (*zea mays everta*).” 55

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000, section 75 of Act 19 of 2001, section 180 of Act 60 of 2001, section 60 of Act 30 of 2002, section 122 of Act 74 of 2002, section 191 of Act 45 of 2003, section 111 of Act 32 of 2004, section 132 of Act 31 of 2005 and section 58 of Act 9 of 2006

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109. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

(a) by the substitution in subsection (1)(b)(ix) for item (aa) of the following item:
 “(aa) in terms of **[a company formation]** an asset-for-share transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);”;

(b) by the deletion of subsection (1)(b)(ix)(bb); and

(c) by the substitution in subsection (1)(b)(ix)(gg) for item (B) of the following item:

“(B) in subparagraph (aa), **[(bb)]** or (cc) regardless of the market value of the asset disposed of in exchange for those securities; or”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2007 and shall apply in respect of any transaction entered into on or after that date.

Amendment of section 99 of Act 45 of 2002

110. (1) Section 99 of the Collective Investment Schemes Control Act, 2002, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) No **[transfer or stamp duty or]** registration or other fees are payable in respect of any endorsement or entry made in terms of subsection (5), and **[no stamp duty or]** other fees are payable in respect of the issue of a substituting participatory interest or the transfer of assets as a result of any amalgamation, cession, transfer or take-over in terms of this section.”.

(2) Subsection (1) comes into operation on 1 July 2008.

Amendment of section 3 of Act 20 of 2006, as amended by section 95 of Act 8 of 2007

111. (1) Section 3 of the Revenue Laws Amendment Act, 2006, is hereby amended—

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

“(2) **[Paragraphs]** Paragraph (i) **[and (o)]** of subsection (1) shall be deemed to have come into operation on 2 November 2006 and shall apply in respect of any year of assessment commencing on or after that date.”; and

(b) by the addition of the following subsection:

“(3) Paragraph (o) of subsection (1), to the extent that it relates to the provisions of paragraph 2 of the Tenth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), is deemed to have come into operation on 2 November 2006 and shall apply in respect of any year of assessment commencing on or after that date, and to the extent that it relates to any other provision of that Act, comes into operation on 1 March 2008 and shall apply in respect of any year of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 7 February 2007.

Repeal of Schedule 3 to Act 9 of 2006

45

112. (1) Schedule 3 to the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 30 October 2007 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 3 of Act 8 of 2007

113. Section 3 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Paragraphs (e), (f), (g), (h), (i) and (j) of subsection (1) are deemed to have come into operation on 1 October 2007 and shall apply in respect of any lump sum benefit accrued on or after that date.” 5

Amendment of section 15 of Act 8 of 2007

114. (1) Section 15 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for the words in subsection (1) preceding the amendment of the following words: 10

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

(2) Subsection (1) is deemed to have come into operation on 1 March 2007.

Amendment of section 54 of Act 8 of 2007 15

115. (1) Section 54 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in subsection (1)(c) for the words preceding the amendment of the following words:

“by the substitution in paragraph (a) of the definition of “**provisional taxpayer**” for the words following subparagraph (ii) and preceding item (aa) of the following words:” 20

(2) Subsection (1) is deemed to have come into operation on 7 February 2007.

Repeal of section 56 of Act 8 of 2007

116. (1) Section 56 of the Taxation Laws Amendment Act, 2007, is hereby repealed. 25
(2) Subsection (1) is deemed to have come into operation on 8 August 2007.

Amendment of section 64 of Act 8 of 2007

117. (1) Section 64 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in subsection (1)(b) for the words preceding the amendment of the following words:

“by the substitution in [subparagraph (b)] paragraph 63A(b) for the words preceding item (i) of the following words:” 30

(2) Subsection (1) is deemed to have come into operation on 1 April 2006.

Amendment of section 67 of Act 8 of 2007

118. (1) Section 67 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (2) of the following subsection: 35

“(2) Subsection (1) shall be deemed to have come into operation on 2 November 2006 and shall apply in respect of any disposal on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 8 August 2007.

Amendment of section 112 of Act 8 of 2007 40

119. (1) Section 112 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in paragraph (a) for the words preceding the amendment of the following words:

“by the substitution in paragraph 1(1) for paragraph (c) of the definition of “**Championship site**” of the following paragraph:” 45

(2) Subsection (1) is deemed to have come into operation on 7 February 2007.

Amendment of section 115 of Act 8 of 2007

120. (1) Section 115 of the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Section 63 of the Diamonds Act, 1986 (Act No. 56 of 1986), [**and section 31 of the Diamonds Amendment Act, 2005 (Act No. 29 of 2005), are]** is hereby amended as set out in paragraph 2 of Appendix III to this Act.”. 5
- (2) Subsection (1) is deemed to have come into operation on 1 July 2007.

Amendment of paragraph 4 of Appendix I to Act 8 of 2007

121. Appendix I to the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution in paragraph 4 for the words preceding subparagraph (a) of the following words: 10

“The rate of tax referred to in section 2(1) of this Act, in respect of the taxable income of companies (other than a public benefit organisation or recreational club referred to in paragraph 5 or a small business corporation referred to in paragraph 6) in respect of any year of assessment ending during the twelve month period ending on 31 March 2008, is, subject to the provisions of paragraph [8] 9, as follows:—”. 15

Amendment of paragraph 1 of Appendix III to Act 8 of 2007

122. (1) Appendix III to the Taxation Laws Amendment Act, 2007, is hereby amended by the substitution for paragraph 1 of the following paragraph: 20

- “**1.** For purposes of paragraph 2 of this [**Schedule**] Appendix, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Diamonds Act, 1986 (Act No. 56 of 1986), [**or the Diamonds Amendment Act, 2005 (Act No. 29 of 2005),**] bears the meaning so assigned.”. 25
- (2) Subsection (1) is deemed to have come into operation on 1 July 2007.

Insertion of paragraph 1A into Appendix III to Act 8 of 2007

123. (1) Appendix III to the Taxation Laws Amendment Act, 2007, is hereby amended by the insertion after paragraph 1 of the following paragraph: 30

- “**1A.** For purposes of paragraph 3 of this Appendix, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Diamonds Amendment Act, 2005 (Act No. 29 of 2005), bears the meaning so assigned.”. 35
- (2) Subsection (1) is deemed to have come into operation on 1 July 2007.

Special zero-rating in respect of goods or services supplied by 2007 ICC 20 20 WC (South Africa) 35

124. (1) The supply of goods or services by 2007 ICC 20 20 WC (South Africa) in respect of the staging of the International Cricket Council’s 2007 Twenty 20 over World Championship in the Republic shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the zero rate to the extent that consideration for that supply is received from the International Cricket Council. 40

- (2) Subsection (1) is deemed to have come into operation on 26 November 2006.

Special rules relating to the amalgamation of professional and amateur sporting bodies 45

125. (1) For the purposes of this section, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, must, unless the context otherwise indicates, bear the meaning so assigned, and—

- “**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962); 50
- “**transferor**” means any person who carries on any professional sporting activities falling under a code of sport administered and controlled by a national federation

as contemplated in section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998); and

“**transferee**” means any company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or any association of persons incorporated, formed or established in the Republic— 5

- (a) approved by the Commissioner in terms of section 30 of the Income Tax Act;
- (b) engaged in the activities contemplated in paragraph 9 of Part I of the Ninth Schedule to the Income Tax Act, which activities fall under the same code of sport as the sporting activities carried on by the transferor; 10
and
- (c) which holds all the equity share capital in the transferor.

(2) This section applies, notwithstanding any provision to the contrary in the Income Tax Act, other than section 103 and Part IIA of Chapter III, in respect of a transaction, as approved by the Commissioner and subject to such conditions as he or she may impose, in terms of which a transferor disposes of all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to a transferee and as a result of which the transferor’s existence will be terminated. 15

(3) Where the transferor disposes of—

- (a) a capital asset to the transferee which acquires it as a capital asset— 20
 - (i) that transferor must be deemed to have disposed of that asset for an amount equal to base cost of that asset on the date of the disposal thereof; and
 - (ii) that transferor and that transferee must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that transferee, be deemed to be one and the same person with respect to— 25
 - (aa) the date of acquisition of that asset by that transferor and the amount and date of incurral by that transferor of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule to the Income Tax Act; 30
and
 - (bb) any valuation of that asset effected by that transferor as contemplated in paragraph 29(4) of the Eighth Schedule to the Income Tax Act; or
- (b) an asset held by it as trading stock to the transferee which acquires it as trading stock— 35
 - (i) that transferor must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that transferor in respect of that asset in terms of section 11(a) or 22(1) or (2) of the Income Tax Act; and 40
 - (ii) that transferor and that transferee must, for purposes of determining any taxable income derived by that transferee from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that transferor and the amount and date of incurral by that transferor of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2) of the Income Tax Act. 45

(4) Where a transferor disposes of an asset that constitutes an allowance asset in that transferor’s hands to the transferee and that transferee acquires that asset as an allowance asset— 50

- (a) no allowance allowed to that transferor in respect of that asset must be recovered or recouped by that transferor or included in that transferor’s income for the year of that transfer; and
- (b) that transferor and that transferee must be deemed to be one and the same person for purposes of determining the amount of any allowance— 55
 - (i) to which that transferee may be entitled in respect of that asset; or
 - (ii) that is to be recovered or recouped by or included in the income of that transferee in respect of that asset.

(5) Where the transferee disposes of any share in the transferor as a result of the liquidation, winding up or deregistration of that transferor, that transferee must disregard that disposal for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss. 60

(6) The provisions of section 10(1)(cN) of the Income Tax Act will not apply in respect of the receipts and accruals derived by the transferee during the year of assessment in which the transaction contemplated in subsection (2) was concluded.

(7) The transferee and the Commissioner may agree, subject to such adjustments as may be necessary and subject to such conditions as the Commissioner may impose, that the transferee be deemed to have received all receipts and accruals and be deemed to have incurred all expenditure and losses received or incurred by the transferor during the year of assessment in which the transaction contemplated in subsection (2) was concluded. 5

(8) The provisions of section 30 of the Income Tax Act will not apply in respect of the transferee as from the date the transaction contemplated in subsection (2) was concluded. 10

(9) No transfer duty is payable in terms of the Transfer Duty Act, 1949, in respect of the acquisition of an asset by the transferee in terms of a transaction as contemplated in subsection (2) if the public officer of the company has made a sworn affidavit or solemn declaration that the transaction complies with the provisions of this section. 15

(10) Subsections (1) to (9) come into operation on 1 January 2008 and shall apply to any disposal on or before 31 December 2009.

Short title and commencement

126. (1) This Act is called the Revenue Laws Amendment Act, 2007. 20

(2) Except in so far as is otherwise provided for in this Act or the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, shall for the purposes of assessments of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008. 25

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