

DRAFT
REPUBLIC OF SOUTH AFRICA

TAXATION LAWS
AMENDMENT BILL

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

(MINISTER OF FINANCE)

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To—

- amend the Transfer Duty Act, 1949, so as to provide for share block companies; to effect consequential amendments;
- amend the Estate Duty Act, 1955, so as to make further provision for a deduction; to amend a time period; to limit a liability;
- amend the Income Tax Act, 1962, so as to fix the rates of normal tax and amend monetary amounts; to make new provisions; to effect textual and consequential amendments;
- amend the Customs and Excise Act, 1964, so as to amend the air passenger tax; to amend rates of duty in Schedule No. 1;
- amend the Banks Act, 1990, so as to effect a consequential amendment; to update a reference;
- amend the Value-Added Tax Act, 1991, so as to amend monetary amounts; to insert a new provision; to effect consequential amendments;
- amend the Taxation Laws Amendment Act, 2004, so as to change an effective date;
- amend the Revenue Laws Amendment Act, 2006, so as to change effective dates;
- amend the Diamond Export Levy Act, 2007, so as to insert a definition;

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- amend the Securities Transfer Tax Act, 2007, so as to make a textual amendment;
- amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend effective dates; to amend provisions; to update a Schedule;
- amend the Revenue Laws Amendment Act, 2008, so as to amend an effective date;
- introduce measures relating to sharing of general fuel levy revenue; and to provide for matters connected therewith.

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

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

1. Section 1 of the Transfer Duty Act, 1949, is hereby amended—
 - (a) by the insertion in the definition of “fair value” of the following paragraph preceding the proviso:

“(d) in relation to a share in a company as contemplated in paragraph (g) of the definition of ‘property’, means so much of the fair market value, as at the date of acquisition of that share, of any property held by that company which constitutes property as contemplated in paragraphs (a), (b) and (c) of that definition (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property) as is attributable to that share”;
 - (b) by the substitution in the definition of “property” for paragraphs (d) and (e) of the following paragraphs:

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- “(d) a share (other than a share contemplated in paragraph (g)) or member’s interest in a residential property company; **[or]**
- (e) a share (other than a share contemplated in paragraph (g)) or member’s interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973) or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;”;
- (c) by the insertion in the definition of “property” of the following paragraph:
“(g) a share in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);”.

(2) Subsection (1) comes into operation on [date of introduction] and applies to the acquisition of any share in a share block company on or after that date.

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

2. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1A) for the words preceding the proviso of the following words:

“Where a person who acquires any property contemplated in paragraph (d), **[or]** (e), or (g) of the definition of ‘property’ fails to pay the duty within the period contemplated in subsection (1), the public officer as defined in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962), of that company and the person from whom the shares or member’s interest are acquired shall be jointly and severally liable for such duty”.

(2) Subsection (1) comes into operation on [date of introduction] and applies to the acquisition of any share in a share block company on or after that date.

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,

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

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

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

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

(b) by the insertion of the following subsection:

“(16) No duty shall be payable in respect of any acquisition of a domestic residence as defined in paragraph 51A(1) of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962) where that acquisition takes place as a result of a distribution contemplated in paragraph 51A(2) of that Schedule to that Act.”.

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

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2010 and applies to distributions made on or after that date and before 1 January 2012.

Repeal of section 9A of Act 40 of 1949

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

Amendment of section 4A of Act 45 of 1955, as inserted by section 6 of Act 92 of 1971 and amended by section 3 of Act 95 of 1978, section 5 of Act 102 of 1979, section 12 of Act 106 of 1980, section 4 of Act 99 of 1981, section 6 of Act 81 of 1985, section 2 of Act 71 of 1986, section 11 of Act 87 of 1988, section 5 of Act 30 of 2002, section 17 of Act 9 of 2006 and section 1 of Act 8 of 2007

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

“Dutiable amount of an estate

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

(2) If a spouse of a person contemplated in subsection (1) acquired all the property that constituted the net value of the estate contemplated in subsection (1), an additional amount of R3,5 million shall be added to the amount specified in subsection (1) when determining the dutiable amount of the estate of that spouse.

(3) If more than one spouse of a person contemplated in subsection (1) acquired all the property that constituted the net value of the estate contemplated in subsection (1), an additional amount shall be added to the amount specified in subsection (1) when determining the dutiable amount of the estate of each of those spouses, which amount shall be an amount that bears to R3,5 million the same ratio as the value of the property acquired by the spouse bears to the net value of the estate contemplated in subsection (1).

(4) The additional amount contemplated in subsection (2) shall not exceed R3,5 million.”.

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(2) Subsection (1) comes into operation on 1 January 2010 and applies in respect of—

- (a) the estate of a person who dies on or after that date; and
- (b) the estate of a spouse of a person contemplated in paragraph (a).

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1996, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991, section 9 of act 97 of 1993, section 8 of act 53 of 1999 and section 1 of Act 19 of 2001

6. Section 5 of the Estate Duty Act, 1955, is hereby amended—

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

“in the case of any such fiduciary, usufructuary or other like interest in property as is referred to in paragraph (a) of section 3(2), an amount determined by capitalizing at twelve per cent the annual value of the right of enjoyment of the property in which the deceased held any such fiduciary, usufructuary or other like interest, to the extent to which the person who upon the cessation of the said interest of the deceased in consequence of the death of the deceased becomes entitled to any right of enjoyment of such property of whatever nature, over the expectation of life of such person[, **or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period**]”;

- (b) by the substitution for paragraphs (c), (d) and (d)bis of the following paragraph:

“(c) in the case of any right to any annuity referred to in section 3(2)(a) or (b), or an annuity to which section 3(3)(a) applies, an amount equal to the value of the annuity capitalised at twelve per cent over the duration of the annuity;”; and

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

“(f) in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of

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the full ownership of such property exceeds the value of such interest, determined[—

- (i) **in the case of a usufructuary interest, by capitalizing at twelve per cent. the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest, or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;**
- (ii) **in the case of an annuity charged upon the property, by capitalizing at twelve per cent. the amount of the annuity over the expectation of life of the person entitled to such annuity, or if it is to be held for a lesser period than the life of such person, over such lesser period; or**
- (iii) **in the case of any other interest, by capitalizing at twelve per cent. such amount as the Commissioner may consider reasonable as representing the annual yield of such interest, over the expectation of life of the person entitled to such interest, or if such interest is to be held for a lesser period than the life of such person, over such lesser period]** as contemplated in paragraph (b),”.

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

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

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

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

(3) The Income Tax Act, 1962, is hereby amended by the substitution for the amounts in section 6(2)(a) and (b) respectively of the amounts in the third

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column opposite the relevant section in the table in paragraph 2 of Appendix I to this Act.

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

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

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

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

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 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,

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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 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008 and section 4 of Act 60 of 2008

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

- (a) by the deletion in the definition of “company” of paragraph (e)(i);
- (b) by the substitution in the definition of “connected person” for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) any trust (other than a portfolio of a collective investment scheme in securities) of which such natural person or such relative is a beneficiary;”;

- (c) by the substitution in the definition of “connected person” for the words preceding subparagraph (i) of paragraph (b) of the following words:

“in relation to a trust (other than a portfolio of a collective investment scheme in securities)—”;

- (d) by the substitution in the definition of “connected person” for paragraph (bA) of the following paragraph:

“(bA) in relation to a connected person in relation to a trust (other than a collective investment scheme in property shares managed or carried on by any company registered as a manager under section

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42 of the Collective Investment Schemes Control Act, 2002, for purposes of Part V of that Act and other than a portfolio of a collective investment scheme in securities), includes any other person who is a connected person in relation to such trust;”;

- (e) by the substitution in the definition of “connected person” for subitem (bb) of paragraph (d)(vi) of the following subitem:

“(bb) any relative of such member or any trust (other than a portfolio of a collective investment scheme in securities) which is a connected person in relation to such member; and”;

- (f) by the addition to the definition of “connected person” of the following proviso:

“: Provided that for the purposes of this definition, a company includes a portfolio of a collective investment scheme in securities;”;

- (g) by the substitution in the definition of “contributed tax capital” for the words following paragraph (b) and preceding the proviso of the following words:

“reduced by so much of that amount as the company has transferred on or after that date to shareholders in relation to those shares, and has by the date of the transfer determined in writing to be an amount so transferred, which written determination must be communicated, in writing, to those shareholders”;

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

“ **‘dividend’** means any amount transferred or applied by a company for the benefit of any person in respect of or by virtue of any share in that company, whether—

(a) by way of a distribution;

(b) as consideration for the acquisition of any share in that company;

(c) by way of release or relief from any obligation measurable in money;

(d) by way of an enhancement of the preferences, rights or other terms relating to that share; or

(e) by way of any other means,

but does not include any amount so transferred or applied by the company to the extent that the transfer or application results in a reduction of contributed tax capital;”;

- (i) by the deletion in the definition of “gross income” of paragraph (eB);

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- (j) by the deletion in the definition of “gross income” of paragraph (eC);
- (k) by the deletion in the definition of “gross income” of the proviso to paragraph (k);
- (l) by the insertion after the definition of “listed company” of the following definition:
- “ **‘listed share’** means a share that is listed on an exchange as defined in section 1 and licensed under section 10 of the Securities Services Act, 2004 (Act No. 36 of 2004);”;
- (m) by the insertion after the definition of “low-cost residential unit” of the following definition:
- “ **‘lump sum benefit’** means a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;”;
- (n) by the substitution in the definition of “pension fund” for subparagraphs (i) and (ii) of paragraph (a) of the following subparagraphs:
- “(i) any **[superannuation,]** pension, provident or dependants’ fund or pension scheme established by law; **[or]**
- (ii) any **[superannuation,]** pension, provident or dependants’ fund or pension scheme established for the benefit of the employees of any municipality or of any local authority (as defined in the definition of ‘local authority’ in this section **[1]** prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006 (Act No. 20 of 2006), that was established prior to the date that section so came into operation); or”;
- (o) by the substitution in the definition of “pension preservation fund” for item (bb) of paragraph (a)(ii) of the proviso of the following item:
- “(bb) if the member elected to have any lump sum benefit contemplated in paragraph **[2(b)(ii)] 2(1)(b)(ii)** of the Second Schedule transferred to this pension preservation fund and who made this election while they were members of that other fund;”;
- (p) by the substitution in the definition of “pension preservation fund” for subparagraph (iv) of paragraph (a) of the proviso of the following subparagraph:
- “(iv) **[a person]** persons who **[has]** have elected to transfer **[an amount]** to that fund amounts awarded to **[that person]** those persons in terms of **[a]** any court order contemplated in section 7(8) of the

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Divorce Act, 1979 (Act No. 70 of 1979), from **[a]** any pension fund or pension preservation fund for the benefit of **[that person]** those persons”;

- (q) by the substitution in the definition of “pension preservation fund” for the words preceding paragraph (b)(i) of the proviso of the following words:
“payments or transfers to the fund in respect of a member are limited to any amount in terms of a court order contemplated in paragraph **[2(b)] 2(1)(b)** of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”;
- (r) by the substitution in the definition of “pension preservation fund” for subparagraph (ii) of paragraph (b) of the proviso of the following subparagraph:
“(ii) a pension fund~~[,]~~ or pension preservation fund~~[,]~~ **provident preservation fund or retirement annuity fund**] of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956)”;
- (s) by the substitution in the definition of “pension preservation fund” for paragraph (c) of the proviso of the following paragraph:
“(c) with the exception of amounts transferred to any other pension fund or pension preservation fund, not more than one amount contemplated in paragraph **[2(b)] 2(1)(b)(ii)** of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund:
Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b)”;
- (t) by the substitution for the definition of “person” of the following definition:
“ ‘**person**’ includes an insolvent estate, the estate of a deceased person **[and]**, any trust and any portfolio of a collective investment scheme in securities”;
- (u) by the insertion after the definition of “person” of the following definition:
“ ‘**portfolio of a collective investment scheme in securities**’ means any portfolio comprised in any collective investment scheme in securities”

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contemplated in Part IV of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by any company registered as a manager under section 42 of that Act for the purposes of that Part.”;

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

“(bb) if the member elected to have any lump sum benefit contemplated in paragraph **[2(b)(ii)] 2(1)(b)(ii)** of the Second Schedule transferred to that fund and who made this election while they were members of that other fund.”;

- (w) by the substitution in the definition of “provident preservation fund” for the words preceding paragraph (b)(i) of the proviso of the following words:

“payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(b)] 2(1)(b)** of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”;

- (x) by the substitution in the definition of “provident preservation fund” for subparagraph (ii) of paragraph (b) of the proviso of the following subparagraph:

“(ii) a **[pension fund, pension preservation fund,]** provident fund~~[,]~~ **or** provident preservation fund **[or retirement annuity fund]** of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956).”;

- (y) by the substitution in the definition of “provident preservation fund” for paragraph (c) of the proviso of the following paragraph:

“(c) with the exception of amounts transferred to any other provident fund or provident preservation fund, not more than one amount contemplated in paragraph **[2(b)] 2(1)(b)(ii)** of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other provident preservation fund: Provided that this paragraph applies separately to each payment or transfer to the fund contemplated in paragraph (b); and”;

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(z) by the substitution in the definition of “retirement annuity fund” for subparagraph (v) of paragraph (b) of the proviso of the following subparagraph:

“(v) that no member shall become entitled to the payment of any annuity or lump sum benefit contemplated in paragraph **[2(a)] 2(1)(a)** of the Second Schedule prior to reaching normal retirement age;”;

(zA) by the substitution in the definition of “retirement annuity fund” for subparagraph (x) of paragraph (b) of the proviso of the following subparagraph:

“(x) that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to—

(aa) an annuity or a lump sum benefit contemplated in paragraph **[2(a)] 2(1)(a)** of the Second Schedule payable on that date;

(bb) be reinstated as a full member under conditions prescribed in the rules of the fund;

(cc) the payment of a lump sum benefit contemplated in paragraph **[2(b)(ii)] 2(1)(b)(ii)** of the Second Schedule where that member’s interest in the fund is less than an amount determined by the Minister by notice in the *Gazette*; or

(dd) the payment of a lump sum benefit contemplated in paragraph **[2(b)(ii)] 2(1)(b)(ii)** of the Second Schedule where that member emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control;”;

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

“(ee) for any deduction contemplated in paragraph **[2(b)] 2(1)(b)** of the Second Schedule;”;

(zC) by the substitution for the definition of “retirement date” of the following definition:

“ **‘retirement date’** means the date on which—

(a) a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in **[paragrah 2(a)] paragraph**

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2(1)(a) of the Second Schedule on or subsequent to **[death or]** attaining normal retirement age; or

(b) a nominee or dependant of a deceased member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule on the death of the member;”;

(zD) by the substitution for the definition of “retirement fund lump sum benefit” of the following definition:

“ **‘retirement fund lump sum benefit’** means an amount determined in terms of paragraph **[(2)(a)] 2(1)(a)** of the Second Schedule **[in respect of a year of assessment]**”;

(zE) by the substitution for the definition of “retirement fund lump sum withdrawal benefit” of the following definition:

“ **‘retirement fund lump sum withdrawal benefit’** means an amount determined in terms of paragraph **[2(b)] 2(1)(b)** of the Second Schedule;” and

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

“(i) won, produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of extraction, processing, separation, refining, beneficiation, manufacture, sale or exchange by him or on his behalf, or”.

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

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

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

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

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

9. Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10)(f) for subparagraph (ii) of the following subparagraph:

- “(ii) any amount contemplated in paragraph **[2(b)]** 2(1)(b) of the Second Schedule which was included in the taxpayer's income for the year; and”.

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

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

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

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

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on or after that date.

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

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

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

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

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

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

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998,

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section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, section 5 of Act 3 of 2008 and section 9 of Act 60 of 2008

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

- (a) by the deletion in subsection (1)(b)(ii) of the further proviso;
- (b) by the substitution in subsection (4)(a) for the proviso of the following proviso:

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

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

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

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

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

Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of

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Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993, section 7 of Act 21 of 1994, section 9 of Act 21 of 1995, section 7 of Act 28 of 1997, section 25 of Act 30 of 1998, section 15 of Act 53 of 1999, section 7 of Act 59 of 2000, section 12 of Act 74 of 2002, section 20 of Act 45 of 2003, section 11 of Act 32 of 2004, section 13 of Act 31 of 2005 and section 8 of Act 20 of 2006

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

- “(g) any pension, lump sum benefit or annuity granted to such person, wheresoever payment of that pension, lump sum benefit or annuity is made and wheresoever the funds from which payment is made are situate—
- (i) by the Government, any provincial administration, or by any municipality in the Republic; or
 - (ii) by any person, whether residing or carrying on business in the Republic or not, if the services in respect of which that pension, lump sum benefit or annuity was granted were performed within the Republic for at least two years during the ten years immediately preceding the date from which the pension, lump sum benefit or annuity first became due: Provided that if the pension, lump sum benefit or annuity was granted in respect of services which were rendered partly within and partly outside the Republic, only so much of such pension, lump sum benefit or annuity as bears to the amount of such pension, lump sum benefit or annuity the same ratio as the period during which the services were rendered in the Republic bears to the total period during which the services were rendered, shall be deemed to be derived from a source within the Republic: Provided further that any services rendered in the territory of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei shall be deemed to have been rendered within the Republic;”.

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

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

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

“ ‘foreign business establishment’ in relation to a controlled foreign company, means a fixed place of business located in a country other than the Republic that is used for the continuous carrying on of the business of that controlled foreign company for a period of not less than one year, where—

(a) the business of that fixed place of business is conducted through one or more offices, shops, factories, warehouses or other structures for at least one year;

(b) that fixed place of business is suitably staffed with on-site managerial and operational employees of that controlled foreign company who conduct the primary operations of that business;

(c) that fixed place of business is suitably equipped for conducting the primary operations of that business;

(d) that fixed place of business has proper facilities for conducting the primary operations of that business; and

(e) that fixed place of business is located in that country solely or mainly for a purpose other than the postponement or reduction of any tax imposed by any sphere of government in the Republic or in any other country;

Provided that for the purposes of determining whether there is a fixed place of business as contemplated in this definition, a controlled foreign company may take into account the utilisation of structures as

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contemplated in paragraph (a), employees as contemplated in paragraph (b), equipment as contemplated in paragraph (c), and facilities as contemplated in paragraph (d) of any other company—

(i) incorporated in the country in which the fixed place of business of the controlled foreign company is located;

(ii) if that other company forms part of the same group of companies as the controlled foreign company; and

(iii) to the extent that the structures, employees, equipment and facilities are located in the same country as the fixed place of business of the controlled foreign company;”;

(b) by the substitution in subsection (2) for subparagraph (i) of paragraph (C) of the proviso of the following subparagraph:

“(i) the participation rights are held by an insurer 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”;

(c) by the addition to subsection (2A) of the following further proviso:

“: Provided further that the net income of a controlled foreign company in respect of a foreign tax year will be deemed to be zero where—

(i) the controlled foreign company is subject to tax by the national sphere of government of the country in which that controlled foreign company is incorporated;

(ii) the country in which that controlled foreign company is incorporated has a statutory rate of tax on income of companies of at least 20 per cent; and

(iii) the aggregate amount of tax payable to all spheres of government of any country other than the Republic by the controlled foreign company on the net income, without regard to the provisions of subsection (9), of that controlled foreign company in respect of the foreign tax year of that controlled foreign company is at least 75 per cent of the amount of normal tax that the controlled foreign company would have paid had the controlled foreign company been a resident for that foreign tax year—

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- (aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and
- (bb) after disregarding any assessed loss.”;

- (d) by the deletion in subsection (10)(a) of subparagraphs (i), (iv) and (v); and
- (e) by the substitution for the proviso to subsection (10) of the following proviso:

“: Provided that the Commissioner—

- (i) must take into account the activities and transactions carried out or to be carried out by the persons involved[.]; and
- (ii) must not issue any ruling in terms of this section if the ruling application relates to the determination of the net income of a controlled foreign company in respect of a foreign tax year and is submitted after the end of the year of assessment in which that foreign tax year ends.”.

(2) Paragraphs (a) and (c) of subsection (1) come into operation on [date of introduction] and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment ending on or after that date.

(3) Paragraphs (d) and (e) of subsection (1) come into operation on [date of introduction] and apply in respect of applications for rulings submitted 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

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of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008 and section 16 of Act 60 of 2008

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

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

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

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

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

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

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she may deem necessary, such association of persons—

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

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

Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner; and

(ii) any receipts and accruals other than levies derived by a body corporate, share block company or association contemplated in subparagraph (i), to the extent that the aggregate of those receipts and accruals do not exceed R50 000;

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

“(gE) any amount awarded to a person by a beneficiary fund as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956);”

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

“(h) interest as defined in section 24J(1) or deemed interest as contemplated in section 8E(2), which is received or accrued during

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any year of assessment by or to any person who is not a resident, unless that person—

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

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

and for purposes of this paragraph, so much of any dividend distributed to that person by a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section 1 out of income derived by that portfolio which is exempt from tax in the hands of that portfolio under paragraph (iA), is deemed to be interest];”;

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

“(xv) in the case of any taxpayer who is a natural person—

(aa) so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed **[R3 200] R3 500**: Provided that the amount of the exemption in terms of this paragraph shall—

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

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

(bb) so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic **[and any dividends (other than foreign dividends), which are not otherwise exempt from tax,]** as does not during the year of assessment exceed—

(A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of **[R27 500] R30 000**; or

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(B) in any other case, the amount of [R19 000] R21 000, reduced by the amount of any exemption allowable in terms of paragraph (aa);”;

(e) by the deletion in subsection (1) of paragraph (iA);

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

“(iB) any amount received by or accrued to a holder of a participatory interest in a portfolio of a collective investment scheme in securities by way of a distribution from that portfolio if that amount is deemed to have accrued to that portfolio in terms of section 25BA(b);”;

(g) by the deletion in subsection (1)(k)(i) of item (bb);

(h) by the deletion in subsection (1)(k)(ii) of item (aa);

(i) by the substitution in subsection (1)(k)(ii) for item (bb) of the following item:

“(bb) **[to the extent that]** if the share in respect of which the foreign dividend [relates to any amount which was declared by a listed company which complies with paragraphs (a) and (b) of the definition of ‘listed company’ in section 1] is paid is an uncertificated share as defined in section 64D and that share is a listed share;”;

(j) by the deletion in subsection (1)(u) of subparagraph (ii); and

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

“(zG) any amount received by or accrued to a person by way of a subsidy payable by the State under any scheme designed to promote the production of films (as defined in section 24F); Provided that where that person has agreed to pay the whole or any portion of that amount to any film owner (as defined in section 24F) that is the owner of the film in respect of which the subsidy is payable, the exemption under this paragraph must also apply to the whole or that portion of the amount received by or accrued to that film owner;”.

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

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

(4) Paragraphs (c), (e), (f), (g) and (d) (to the extent that it amends the words preceding subitem (A) in section 10(1)(i)(xv)(bb) of the Income Tax Act, 1962) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 January 2010 and apply in respect of—

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

(5) Paragraph (d) of subsection (1), to the extent that it amends—

- (a) monetary amounts, is deemed to have come into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date; and
- (b) the words preceding subitem (A) in section 10(1)(i)(xv)(bb) of the Income Tax Act, 1962, comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010 and applies in respect of—
 - (i) amounts received by or accrued to a portfolio of a collective investment scheme; and
 - (ii) amounts distributed by a portfolio of a collective investment scheme that are derived from amounts contemplated in paragraph (a),on or after that date.

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

(7) Paragraph (k) of subsection (1) comes into operation on [date of introduction] and applies in respect of any amounts received or accrued on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act

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

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

(a) by the deletion of paragraph (bB);

(b) by the addition to paragraph (f) of the following subparagraph:

“(v) the right of use of any pipeline, transmission line or cable or railway line contemplated in the definition of ‘affected asset’ in section 12D”;

(c) by the substitution in paragraph (f) for paragraph (aa) of the proviso of the following paragraph:

“(aa) the allowance under sub-paragraph (i), (ii), (ii) *bis* [or], (iii) or (v) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater;”;

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(d) by the substitution in paragraph (f) for paragraph (dd) of the proviso of the following paragraph:

“(dd) the provisions of this paragraph shall not apply in relation to any such premium or consideration paid by the taxpayer which does not for the purposes of this Act constitute income of the person to whom it is paid, unless such premium or consideration is paid **[under a written agreement formally and finally signed before 10 April 1984 by every party to the agreement]** in respect of a right of use of a line or cable—

(A) used for the transmission of electronic communications;

and

(B) substantially the whole of which is located outside the territorial waters of the Republic,

where the term of the right of use is 20 years or more;”;

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

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

(f) by the substitution in paragraph (g) for subparagraph (vi) of the following subparagraph:

“(vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred **[under an agreement concluded on or after 1 July 1983,]** if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the definition of ‘gross income’ in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued,

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unless the expenditure was incurred pursuant to an obligation to effect improvements—

(aa) in terms of a Public Private Partnership; or

(bb) in terms of a right of use or occupation of land or a building owned by the Government, any provincial administration or any municipality where the right of use or occupation has a duration of 20 years or more;”;

(g) by the substitution in paragraph (k)(ii) for paragraph (dd) of the proviso of the following paragraph:

“(dd) no deduction shall be made under this paragraph in respect of so much of any amount carried forward in terms of paragraph (bb) of this proviso as has been accounted for under paragraph **[(d) of the definition of “formula B” in paragraph 1 of the Second Schedule or the first proviso to paragraph 6] 5(1) or 6(1)(b) or (3) of [that] the Second Schedule;**”;

(h) by the substitution for paragraph (n) of the following paragraph:

“(n) (i) (aa) so much of the total current contributions to any retirement annuity fund or funds made during the year of assessment by any **[person] taxpayer** as a member of such fund or funds as does not in the case of the taxpayer exceed the greatest of—

(A) 15 per cent of an amount equal to the amount remaining after deducting from, or setting off against, the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of ‘retirement-funding employment’ in section 1), and any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) the deductions or assessed losses admissible against such income under this Act (excluding this paragraph, sections 17A, 18 and 18A **[of this Act]** and items (c) to (i), inclusive, of paragraph 12(1) of the First Schedule); or

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- (B) the amount, if any, by which the amount of R3 500 exceeds the amount of any deduction to which the taxpayer is entitled under paragraph (k)(i) in respect of the said year; or
- (C) the amount of R1 750;
- (bb) so much of the total of any contributions to any retirement annuity fund or funds made during the year of assessment by any **[person]** taxpayer as a member of such fund or funds as does not exceed R1 800 in the case of the taxpayer, where such contributions are made under conditions prescribed in the rules of the fund whereby a member who has discontinued his or her contributions prematurely is entitled to be reinstated as a full member thereof and the current contributions to the fund have been paid in full:

Provided that—

- [(i)](aa)** no deduction shall be made under subparagraph **[(aa)] (i)(aa)** in respect of any amount paid into a retirement annuity fund for the benefit of a taxpayer as a member of such fund where such amount is a lump sum benefit derived by the **[member]** taxpayer from a pension fund, a pension preservation fund, a provident fund, a provident preservation fund or a retirement annuity fund and that amount has under the provisions of paragraph **[6(a)(i), (ii), (iii) and (iv)]** 6(1)(a)(i)(aa), (bb), (cc) or (dd) of the Second Schedule qualified for deduction from any amount to be included in the **[member's]** taxpayer's gross income;
- [(ii)](bb)** the deductions in terms of subparagraph **[(aa)] (i)(aa)** shall not exceed an amount equal to the amount remaining after deducting from or setting off against the income derived by the taxpayer during the year of assessment the deductions and assessed losses admissible against such income under this Act (excluding the said subparagraph, sections 17A and

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19(3) **[of this Act]** and paragraph 12(1)(c) to (i), inclusive, of the First Schedule);

[(iii)](cc) any current contributions (excluding any amount referred to in **[paragraph (i)]** item (aa) of this proviso) to any retirement annuity fund or funds which are made by **[such person]** the taxpayer as a member of such fund or funds during a year of assessment and do not qualify for deduction from his or her income for that year under subparagraph **[(aa)]** (i)(aa) shall be carried forward and, except to the extent that such contributions have been accounted for under paragraph **[(d) of the definition of 'formula B' in paragraph 1 of the Second Schedule or the first proviso to paragraph 6]** 5(1) or 6(1)(b) or (3) of **[that]** the Second Schedule, be deemed for the purposes of the said subparagraph to be current contributions made to the fund or funds in question during the next succeeding year of assessment;

[(iv)](dd) no deduction shall be made under subparagraph **[(bb)]** (i)(bb) in respect of any contribution relating to any year of assessment which, if such contribution had been made during that year, would not have qualified for deduction under this paragraph, as applicable in relation to the said year;

[(v)](ee) any amount being a portion of a contribution made as contemplated in subparagraph **[(bb)]** (i)(bb) and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment, shall be carried forward and be deemed for the purposes of **[the said paragraph]** subparagraph (i) to be a contribution so made in the next succeeding year of assessment;

[(vi)](ff) the provisions of this paragraph shall apply for the purpose of determining the taxpayer's total taxable income whether derived from the carrying on of any trade or otherwise;

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~~[(viii)](gg)~~ where any such contribution was allowed as a deduction to a **[person]** taxpayer, no deduction in respect of such contribution shall be allowed to such **[person's]** taxpayer's spouse;

(ii) For the purposes of subparagraph (i), any contribution contemplated in that subparagraph which has been made by an employer of the taxpayer for the benefit of the taxpayer must, to the extent that the amount has been included in the income of the taxpayer as a taxable benefit in terms of the Seventh Schedule, be deemed to have been made by the taxpayer."; and

(i) by the insertion of the following paragraph:

“(wA) any amount paid by way of a lump sum during the year of assessment by a taxpayer—

(i) to any former employee who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity;

(ii) to any dependant of that former employee; or

(ii) under any policy of insurance taken out in favour of that former employee (or group of employees of which that former employee is a part) who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity,

for the purposes of the making of any contribution, on or subsequent to the retirement of the former employee, in respect of the former employee or his or her dependant, to any medical scheme or fund contemplated in section 18(1)(a)(i) or 18(1)(a)(ii): Provided that—

(aa) no deduction will be allowed under this paragraph if the taxpayer retains any further obligation, whether actual or contingent, in relation to the former employee or his or her dependant in respect of any such contribution to be made subsequent to the retirement of the former employee; and

(bb) for the purposes of this paragraph, “dependant”, in relation to a former employee, means a spouse or any dependant (as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998)).”

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(2) Paragraphs (b), (c) and (d) of subsection (1) are deemed to have come into operation on 1 January 2009 and apply in respect of rights of use acquired on or after that date.

(3) Paragraphs (e) and (f) of subsection (1) are deemed to have come into operation on 1 January 2009 and apply in respect of rights of use or occupation acquired on or after that date.

(4) Paragraph (h) of subsection (1)—

- (i) to the extent that it amends references to the Second Schedule, is deemed to have come into operation on 1 March 2009; and
- (ii) in any other case, comes into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

(6) Paragraph (i) of subsection (1) is deemed to have come into operation on [date of introduction] and applies in respect of any lump sum paid on or after that date.

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

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

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

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

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

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

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

- (a) is owned by that taxpayer, or acquired by that taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-added Tax Act, 1991 (Act No. 89 of 1991); and
- (b) is **[first]** new and unused when brought into use by that taxpayer solely and directly for purposes contemplated in subsection (1)**]; and**
- (c) prior to first being brought into use by that taxpayer solely and directly for purposes contemplated in subsection (1), was not used by any person for any purpose;].**

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

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

- (a) the actual cost to the taxpayer in respect of the acquisition, installation and erection thereof;
- (b) the cost which a person would, if he or she had acquired, installed or erected that building, part, improvement, machinery, plant, implement, utensil or article under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition, installation or erection thereof was in fact concluded, have incurred in respect of the cost of such acquisition, installation or erection; or

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) by the insertion in subsection (1) of the following paragraph:
- “(h) improvement (other than repairs) to any machinery, plant, implement, utensil or article referred to in paragraph (a), (b), (c), (d) or (e), which is during the year of assessment used as contemplated in that paragraph.”;
- (b) by the substitution for the words after paragraph (h) of the following words:
- “a deduction equal to 20 per cent of the cost to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship **[or]**, aircraft, or improvement (hereinafter referred to as the asset) shall, subject to the provisions of subsection (4), be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment: Provided that where—
- (a) such asset is a ship or aircraft, the deduction shall be calculated on the adjustable cost as determined in terms of section 14 or 14bis, as the case may be; and

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- (c) any new or unused machinery or plant referred to in paragraph (a) of this subsection or improvement referred to in paragraph (h) of this subsection, is or was—
- (i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 March 2002; and
 - (ii) brought into use by the taxpayer on or after that date in a process of manufacture or process which in the opinion of the Commissioner is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business),
- the deduction under this subsection shall be increased to 40 per cent of the cost to that taxpayer of that machinery **[or]**, plant or improvement in respect of the year of assessment during which the plant **[or]**, machinery or improvement was or is so brought into use for the first time and shall be 20 per cent in each of the three subsequent years of assessment.”.

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, section 16 of Act 30 of 2002, section 23 of Act 35 of 2007 and section 21 of Act 60 of 2008

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

- (a) by the substitution in subsection (1) for paragraph (c) of the definition of “affected asset” of the following paragraph:

“(d) **[telephone]** line or cable used for the transmission of **[any signal for the purposes of telecommunication]** electronic communications; and”;

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

“and includes any earthworks or supporting structures forming part of such pipeline, transmission line or cable or railway line and any improvement to such pipeline, transmission line or cable or railway line;”;
and

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

“There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset, **[or the improvement of any affected asset,]** which—”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of assets acquired 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 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 14 of Act 20 of 2006, section 24 of Act 9 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008 and section 23 of Act 60 of 2008

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

“(hh) any company, close corporation or co-operative if the company, close corporation or co-operative—
(A) has not during any year of assessment carried on any trade; and
(B) has not during any year of assessment owned assets, the total market value of which exceeds R5 000;”.

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

24. Section 12F of the Income Tax Act, 1962, is hereby amended—

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

“ **‘airport asset’** means any **[new and unused]** aircraft, hangar, apron, runway or taxiway on any designated airport, and includes any earthworks or supporting structures forming part of such hangar, apron,

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runway or taxiway and any improvements to such aircraft, hangar, apron, runway or taxiway; and”;

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

“ **‘port asset’** means any **[new and unused]** port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot, and includes any earthworks or supporting structures forming part of such terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or depot and any improvements thereto.”; and

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

“(2) In respect of any new and unused airport asset or port asset which—

(a) is **[brought into use for the first time]** owned by such taxpayer; and

(b) is used directly by such taxpayer **[in]** solely for the purposes of carrying on **[his]** the taxpayer’s business as airport, terminal or transport operator or port authority,

there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition (including the construction, erection or installation) of such asset to the extent that such asset is used in the production of the taxpayer’s income.”.

Substitution of section 12H of Act 58 of 1962

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

“Additional deduction in respect of learnership agreements

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

‘employer’ means—

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(a) where only one employer is party to a registered learnership agreement, that employer; or

(b) in the case where more than one employer are parties to a registered learnership agreement, the employer which is identified in that agreement as the lead employer;

'learner' means a learner as defined in section 1 of the Skills Development Act, 1998;

'registered learnership agreement' means—

(a) a contract of apprenticeship entered into before 1 October 2011 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act no. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13 (2)(b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or

(b) a learnership agreement that is—

(i) registered in accordance with the Skills Development Act, 1998;
and

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

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

'Skills Development Act, 1998' means the Skills Development Act, 1998 (Act No. 97 of 1998).

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

(i) during any year of assessment a learner is a party to a registered learnership agreement with an employer; and

(ii) that agreement was entered into pursuant to a trade carried on by that employer,

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

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months, the amount that is allowed to be deducted in terms of that paragraph must be

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limited to an amount which bears to an amount of R30 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

- (3) In addition to any deductions allowable in terms of this Act, where—
- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer for a period of less than 24 full months;
 - (ii) that agreement was entered into pursuant to a trade carried on by that employer; and
 - (iii) that learner successfully completes that learnership during that year of assessment,

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

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

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

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

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

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

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

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

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

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

“ **‘manufacturing asset’** means any **[new and unused]** building, plant or machinery acquired, contracted for or brought into use by a company, which—

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

(b) will qualify for a deduction in terms of section 12C(1)(a), 13 or 13quat[;].

and includes any improvement to such building, plant or machinery.”;

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

“(a) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or

(b) 35 per cent of the cost of any new and unused manufacturing asset used in any other industrial policy project,”;

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

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- “(iii) the project is not integrally related to any other project of the company (or any other company that forms part of the same group of companies as that company that has been approved as contemplated in **[section 12G or]** subsection (8);”;
- and
- (d) by the deletion in subsection (7)(b) of subparagraph (i).

(2) Paragraph (c) of subsection (1) is deemed to have come into operation on [date of introduction] and applies in respect of applications for approval of projects received by the Department of Trade and Industry on or after that date.

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

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

- (a) by the substitution in subsection (1) for paragraphs (e) and (f) of the definition of “qualifying company” of the following paragraphs:
 - “(e) the company is not carrying on any **[trade or will carry on any trade within a period of—**
 - (i) in the case of a junior mining company, 36 months;**
 - (ii) in the case of any other company, 18 months,****after the issue of any shares by that company as contemplated in the definition of “qualifying share”, and the trade mainly carried on or that will be mainly carried on by that company is not an]** impermissible trade;
 - (f) **[within a period of—**
 - (i) in the case of junior mining companies, 36 months; or**
 - (ii) in the case of any other company, 18 months,]**
the sum of the investment income, as defined in section 12E(4)(c), derived by that company during **[a] any** year of assessment does not exceed an amount equal to 20 per cent of the gross income of that company for that year; and”;
- (b) by the deletion in subsection (1) of paragraph (g) of the definition of “qualifying company”;
- (c) by the substitution in subsection (1) for the definition of “venture capital company” of the following definition:

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“ ‘**venture capital company**’ means a company that has been approved by the Commissioner in terms of subsection (5) and in respect of which such approval has not been withdrawn in terms of subsection (6) or (6A).”;

(d) by the substitution in subparagraph (3) for paragraph (b) of the following paragraph:

“(b) any company is the expenditure incurred in respect of shares which, together with other shares held by that company and any other company forming part of the same group of companies as defined in section 41 as that company in the venture capital company, do not constitute more than **[10] 40** per cent of the equity shares of the venture capital company.”;

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

“(5) The Commissioner must approve a venture capital company if that company has applied for approval and the Commissioner is satisfied that—

(a) the company is a resident;

(b) the sole object of the company is the management of investments in qualifying companies;

(c) the company is an unlisted company as defined in section 41;

(d) the company is not a controlled group company in relation to a group of companies contemplated in paragraph (d)(i) of the definition of “connected person”;

(e) the tax affairs of the company are in order and the company has complied with all the relevant provisions of the laws administered by the Commissioner;

(f) the company together with any connected person in relation to that company does not control any qualifying company in which the company holds shares; and

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

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

“(6) If the Commissioner is satisfied that any venture capital company approved in terms of subsection (5) has during a year of assessment—

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- (a) failed to comply with the provisions of that subsection; or
- (b) derived more than 20 per cent of its gross income from sources other than financial instruments (excluding qualifying shares) or services rendered to a qualifying company in which the company holds shares,

the Commissioner must after due notice to the company withdraw that approval from the commencement of that year if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in that notice.”;

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

“(6A) If, after the expiry of a period of 36 months commencing on the date of approval by the Commissioner of a company as a venture capital company in terms of subsection (5), the Commissioner is not satisfied that—

- (a) the expenditure incurred by the company in that period to acquire qualifying shares—

- (i) in a junior mining company, was at least R150 million; or

- (ii) in any qualifying company other than a junior mining company, was at least R30 million; or

- (b) at least 80 per cent of the expenditure incurred by the company in that period to acquire assets held by the company was for qualifying shares issued to the company by qualifying companies, each of which, immediately after the issue, held assets with a book value not exceeding—

- (i) R100 million, where the qualifying company was a junior mining company; or

- (ii) R10 million, where the qualifying company was a company other than a junior mining company; or

- (c) no more than 15 per cent of the expenditure incurred by the company to acquire qualifying shares held by the company was incurred for qualifying shares issued to the company by any one qualifying company,

the Commissioner must after due notice to the company withdraw that approval with effect from the date of approval by the Commissioner of that company as a venture capital company if corrective steps

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acceptable to the Commissioner are not taken by the company within a period stated in the notice.”;

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

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

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

(2) Paragraph (1) comes into operation on 1 July 2009.

Insertion of section 12K in Act 58 of 1962

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

“Exemption of certified emission reductions

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

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

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

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

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

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

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

- (a) in respect of which a letter of approval as contemplated in regulations 3(1)(a) and 7(3) of the Regulations has been issued by the Designated National Authority; and
- (b) that has been registered as contemplated in paragraph 36 of the Modalities; and

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

(2) There must be exempt from normal tax any amount received by or accrued to or in favour of any person in respect of the disposal by that person on or before 31 December 2012 of any certified emission reduction derived by that person in the furtherance of a qualifying CDM project carried on by that person.”.

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

Insertion of section 12L into Act 58 of 1962

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

“Allowance for energy efficiency savings

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

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'energy certificate' means a certificate issued by the South African National Energy Development Institute, reflecting—

- (a) the baseline at the beginning of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;
- (b) the baseline at the end of the year of assessment, with the criteria and methodology determined in accordance with the Regulations;
- (c) the annual energy savings measured and expressed in kilowatt hours for the year of assessment including the full criteria and methodology used to calculate the energy savings determined in accordance with the Regulations; and
- (e) any other information that may be required by the South African National Energy Development Institute in the form and manner and at the time and place that the South African National Energy Development Institute may require;

'Regulations' means the Regulations issued by the Minister of Energy in terms of the National Energy Act, 2008 (Act No. 34 of 2008);

'South African National Energy Development Institute' means the organisation as contemplated in section 7 of the National Energy Act, 2008 (Act No. 34 of 2008).

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

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

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

in which formula—

- (a) "A" represents the amount to be determined;
- (b) "B" represents the energy efficiency savings measured and expressed in kilowatt hours for the year of assessment of the

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taxpayer as contemplated in paragraph (c) of the definition of energy certificate in section 1;

(c) “C” represents the applied rate as the lowest feed-in-tariff expressed in rands per kilowatt hour in effect during the year of assessment as determined in terms of the Regulatory Guidelines of the National Energy Regulator of South Africa issued in terms of section 4(a)(ii) and 47(1) of the National Energy Regulator Act, 2004 (Act No. 40 of 2004); and

(d) “D” represents the number two, unless a different number has been announced by the Minister in the Gazette in which case “D” represents that number.

(4) The Chief Executive Officer of the South African National Energy Development Institute must submit to the Minister any information that the Minister may require in the form and manner and at the place and within the time that the Minister prescribes.

(5) Any decision relating to the issue of an energy certificate is subject to objection and appeal to the Chief Executive Officer of the South African National Energy Development Institute.”

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

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

- (a) by the deletion in subsection (1) of the definition of “certificate of occupancy”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

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

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

“(3B) For the purposes of subsection (3) or (3A), where the taxpayer purchased—

(a) a building from a developer, the purchase price of the building is deemed to be costs incurred by that taxpayer in respect of the erection, extension, addition to or improvement of the building as contemplated in subsection (3) or (3A); and

(b) part of a building from a developer—

[(a)](i) 55 per cent of the purchase price of that part of a building, in the case of a new building erected, extended or added to by that developer as contemplated in subsection (3)(a) or (3A)(a); and

[(b)](ii) 30 per cent of the purchase price of that part of a building, in the case of a building improved by that developer as contemplated in subsection (3)(b) or (3A)(b),

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

(2) Subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of an erection, extension, addition or improvement that commenced or purchase that took place on or after that date.

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

31. (1) Section 13quin of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) For the purposes of subsection (1), to the extent that the taxpayer acquires—

(a) a building without erecting or constructing that building, the acquisition price of that building is deemed to be the cost incurred by the taxpayer in respect of that building; and

(b) a part of a building without erecting or constructing that part—

[(a)](i) 55 per cent of the acquisition price, in the case of a part being acquired; and

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[(b)](ii) 30 per cent of the acquisition price, in the case of an improvement being acquired,

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

(2) Subsection (1) is deemed to have come into effect on 21 October 2008 and applies in respect of a building, part or improvement acquired on or after that date.

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

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

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

“(i) so much of the contributions made by the taxpayer during the relevant year of assessment as contemplated in subsection (1)(a), as does not exceed—

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

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

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

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month in that year in respect of which those contributions were made[:

Provided that the amounts in items (aa) to (cc) must be reduced by any amount contributed by the employer of the taxpayer to any such fund which has by virtue of paragraph 12A of the Seventh Schedule not been included in his or her gross income]; and”; and

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

“For purposes of this section, any amount contemplated in subsection (1), which has been paid or contributed by—”.

(2) Paragraph (a) of subsection (1), to the extent that it—

(a) amends monetary amounts, is deemed to have come into operation on 1 March 2009 and applies in respect of a year of assessment commencing on or after that date; and

(b) deletes the proviso to subparagraph (i), comes into operation on 1 March 2010.

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

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

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

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

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

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

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

Insertion of section 22B in Act 58 of 1962

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

“Dividends treated as income on the disposal of certain shares

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

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

‘resident company’ means a company that is a resident.

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

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

(b) if the shareholder—

(i) held the shares disposed of as trading stock immediately before the disposal; and

(ii) is a connected person in relation to that resident company; and

(c) if the resident company (or any company that is a connected person in relation to the resident company) has, within a period of two years prior to the disposal, incurred any loan, advance or debt—

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

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

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

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

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

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

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

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

“ **‘rental income’** means income derived by way of rent from the letting of any affected asset in respect of which an allowance has been granted to the lessor under section 11(e), 12B, 12C, 12DA or 37B(2)(a), whether in the current or any previous year of assessment, and includes any amount which is included in the income of that person in terms of section 8(4) in respect of an amount deducted in any year of assessment in respect of that affected asset.”.

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Amendment of section 23I of Act 58 of 1962, as inserted by section 37 of Act 35 of 2007 and substituted by section 38 of Act 60 of 2008

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

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

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

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

38. (1) Section 24B of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

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

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

(b) by reason of or in consequence of and within a period of 18 months after that issue, any controlled group company in relation to that company acquires the asset as consideration for the issue of shares or debt by the controlled group company to that company,

the controlled group company is deemed to have actually incurred an amount of expenditure in respect of its acquisition of the asset which is equal to the lesser of the market value of the asset immediately after that acquisition or the market value of the shares or debt issued by the controlled group company immediately after that acquisition: Provided that this subsection does not apply if, within 18 months after the acquisition contemplated in paragraph (b), any other company other than a controlled

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group company in relation to the controlled group company acquires the asset as consideration for the issue of shares or debt by that other company.”.

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

Amendment of section 24F of Act 58 of 1962, as amended by section 17 of Act 85 of 1987, section 19 of Act 90 of 1988, section 24 of Act 101 of 1990, section 26 of Act 129 of 1991, section 30 of Act 59 of 2000, section 25 of Act 74 of 2002, section 32 of Act 31 of 2005 and section 22 of Act 8 of 2007

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

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

“ **‘film owner’** means any person, other than a person carrying on any banking, financial services or insurance business, who owns, whether solely or jointly, a film;”;

(b) by the substitution for the proviso to subsection (8) of the following proviso:

“: Provided that where the full amount of the loan or credit—

(a) is not repayable within a period of **[ten] 15** years from the completion date, the film owner is deemed not to be at risk for purposes of this section to the extent the loan or credit is not repayable within a period of **[ten] 15** years from the completion date of the film[.]; and

(b) exceeds 86 per cent of the total of the production cost and post production cost in respect of the film, the film owner is deemed not to be at risk for the purposes of this section.”; and

(c) by the insertion of the following subsections:

“(9)(a) Subject to section 20 and paragraph (b), where—

(i) any loan or credit (or portion thereof) used by a film owner for the payment or financing of any production cost or post-production cost actually incurred by the film owner is not repaid within a period of 15 years from the completion date; and

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(ii) such production cost or post-production cost or any allowance in relation to such production cost or post-production cost was in the current or any previous year of assessment allowed as a deduction in terms of this section, that film owner must, for the purposes of section 8(4)(a), be deemed to have recovered or recouped an amount equal to the amount of such production cost or post-production cost or allowance that was so allowed as a deduction during the year of assessment in which that period of 15 years ends.

(b) Subject to subsection 20, where—

(i) as a result of the cancellation, termination or variation of an agreement or due to the prescription, waiver or release of a claim for payment, a film owner was during any year of assessment relieved or partially relieved from the obligation to make payment of any production cost or post-production cost;

(ii) such production cost or post-production cost was at the date on which the film owner was so relieved or partially relieved not paid; and

(iii) such production cost or post-production cost or any allowance in relation to such production cost or post-production cost was in the current or any previous year of assessment allowed as a deduction in terms of this section, that film owner must, for the purposes of section 8(4)(a), be deemed to have recovered or recouped an amount equal to the amount of the obligation from which the film owner was so relieved or partially relieved during the year of assessment in which the film owner was so relieved or partially relieved.

(c) Where a film owner is deemed to have recovered or recouped any amount in terms of this subsection, the film owner must—

(i) determine interest at the rate contemplated in paragraph (b) of the definition of “prescribed rate” on that amount from the completion date to the date on which the amount is deemed, in terms of that paragraph, to have been recovered or recouped; and

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(ii) treat that interest as an amount recovered or recouped for the purposes of section 8(4)(a).

(10) Any film owner that is entitled to a deduction in terms of this section must submit to the Minister any information relating to that film required by the Minister in the form and manner and at the place and time that the Minister prescribes.”.

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

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

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

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

Insertion of section 25BA into Act 58 of 1962

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

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

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

(a) to the extent that the amount is distributed by that portfolio—

(i) to any person who is entitled to the distribution by virtue of the person being a holder of a participatory interest in that portfolio;
and

(ii) within 12 months of its receipt by that portfolio,
be deemed to have directly accrued to the person on the date of the distribution; and

(b) to the extent that the amount is not distributed as contemplated in paragraph (a) within 12 months of its receipt by that portfolio, be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its receipt by the portfolio.”.

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

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

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

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

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“(cA) the liabilities contemplated in section 32(1)(a) and (b) of the Short-Term Insurance Act, 1998 (Act No. 53 of 1998), that—

- (i) relate to the carrying on of business in the Republic; and
- (ii) 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.”.

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

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 16 of Act 19 of 2001, section 39 of Act 60 of 2001, section 31 of Act 74 of 2002, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008 and section 41 of Act 60 of 2008

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

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

“(i) a company [**formed and incorporated under**] contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons that has been incorporated , formed or established in the Republic; or”; and

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

“(3B) Where an organisation applies for approval [**before the later of 31 December 2004 or the last day of its first year of assessment**], the Commissioner may approve that organisation for the purposes of this section with retrospective effect, to the extent that the Commissioner is satisfied that that organisation during the period prior to its application complied with the requirements of a ‘public benefit organisation’ as defined in subsection (1).”.

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

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

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

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

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

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

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

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

- (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

“ ‘**environmental waste disposal asset**’ means any [**new and unused**] air, water, and solid waste disposal site, dam, dump, reservoir, or other

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structure of a similar nature, or any improvement thereto, if the structure is—

- (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.”;

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

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

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

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

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

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

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

Insertion of section 40D into Act 58 of 1962

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

“Communications licence conversions

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

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

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

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

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

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

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

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

(a) by the insertion in subsection (1) after the definition of “capital asset” of the following definition—

“ ‘company’ means—

(a) a company as defined in section 1; and

(b) any portfolio of a collective investment scheme in securities;”; and

(b) by the insertion after the definition of “domestic financial instrument holding company” of the following definition:

“ ‘equity share’, for the purposes of sections 42 and 44, includes a participatory interest in a portfolio of a collective investment scheme in securities;”.

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

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

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Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008 and section 49 of Act 60 of 2008

49. (1) Section 42 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of the definition of “equity share”.

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

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

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

- (a) by the deletion in subsection (1) of the definition of “equity share”; and
- (b) by the substitution for subsection (4A) of the following subsection:

“(4A) For purposes of the definition of ‘contributed tax capital’, if the resultant company issues shares in exchange for the disposal of an asset in terms of an amalgamation transaction, the amount received by or accrued to the resultant company as consideration for the issue of shares is deemed to be equal to an amount which bears to the contributed tax capital of the amalgamated company at the time of termination contemplated in paragraph (b) of the definition of ‘amalgamation transaction’ in subsection **[(1)(b)] (1)** the same ratio as the value of the shares held in the amalgamated company at that time by shareholders other than the resultant company bears to the value of all shares held in the amalgamated company at that time.”.

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

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

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

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

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

(2) Subsection (1) comes into operation on 1 January 2009 and applies in respect of any liquidation distribution on or after that date.

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

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

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- (a) by the deletion in subsection (3A) of paragraph (b);
- (b) by the deletion in subsection (3A) of paragraph (d);
- (c) by the substitution in subsection (5)(a) for the words preceding the proviso of the following words:

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

- (d) by the deletion in subsection (5) of paragraph (j);
- (e) by the addition to subsection (5) of the following paragraphs:

“(k) any dividend declared to a natural person which constitutes a distribution contemplated in paragraph 51A(2) of the Eighth Schedule; and

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

- (f) by the substitution for subsection (13) of the following subsection:

“(13) In the determination of the net amount of any dividend declared by a company which carries on long-term insurance business, the amount to be taken into account in terms of subsection (3) in respect of dividends accrued to the company shall be limited **[where the company has established or deemed to have established separate funds as contemplated in section 29A,]** to dividends accrued on shares constituting an asset in its corporate fund.”.

(2) Paragraphs (a) and (d) of subsection (1) come into operation on 1 January 2010 and apply in respect of any dividend declared on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of any dividend accrued on or after that date.

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(4) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of any dividend declared on or after that date.

(5) Paragraph (e) of subsection (1)—

- (a) to the extent that it inserts paragraph (k) into section 64B(5), comes into operation on 1 January 2010 and applies to distributions made on or after that date and before 1 January 2012; and
- (b) to the extent that it inserts paragraph (l) into section 64B(5), is deemed to have come into operation on 1 March 2009 and applies in respect of any dividend declared on or after that date.

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

53. (1) Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(k) for the words after subparagraph (i) of the following words:

- “(ii) a connected person in relation to a shareholder if the connected person and the shareholder form part of the same group of companies as the company that is deemed to have declared the dividend[,

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and] : Provided that if the profits of the company declaring the deemed dividend [is taken into account in the determination of] are reduced as a result of the dividend, this paragraph applies only to the extent that the profits of the shareholder or connected person, as the case may be, [to the extent that the company which is deemed to have declared the dividend has reduced its profits as a result of the dividend] are correspondingly increased; and".

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

Amendment of section 64D of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008

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

(a) by the insertion after the definition of “certificated share” of the following definition:

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

(a) paid by a company that is a resident; or

(b) a foreign dividend if the share in respect of which that dividend is paid is a listed share;”; and

(b) by the substitution for the definition of “regulated intermediary” of the following definition:

“ **‘regulated intermediary’** means any—

(a) central securities depository participant as contemplated in section 34 of the Securities Services Act, 2004 (Act No. 36 of 2004);

(b) authorised user as defined in the Securities Services Act, 2004;

[(c) collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

(d) insurer as defined in section 29A; or]

(e) approved nominee as contemplated in section 36(2) of the Securities Services Act, 2004; or

(f) nominee that holds investments on behalf of clients as contemplated in section 9.1 of Chapter 1 and section 8 of Chapter II of the Codes of Conduct for Administrative and Discretionary Financial Service

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Providers, 2003 (Board Notice 79 of 2003) published in *Government Gazette* No. 25299 of 8 August 2003;”.

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

Amendment of section 64E of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008

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

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

“(1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated at the rate of 10 per cent of the amount of any dividend paid by a company **[that is a resident]**.”; and

(b) by the addition of the following subsection:

“(3)(a) Where a dividend paid by a company consists of a distribution *in specie* of listed shares, the amount of that dividend must, for the purposes of subsection (1), be deemed to be equal to an amount determined in accordance with paragraph (b) if—

(i) that distribution is comprised solely of listed shares that constitute one group of identical assets as defined in paragraph 32(2) of the Eighth Schedule;

(ii) the company disposes of ten per cent of the total number of the shares that comprise that distribution prior to transferring the remainder of the shares that comprise that distribution to the shareholders entitled to the distribution;

(iii) the company elects that this subsection applies to that distribution;
and

(iv) the company communicates the amount determined in accordance with paragraph (b), in writing, to the shareholders entitled to the distribution.

(b) For the purposes of paragraph (a), the amount of the dividend contemplated in that paragraph is an amount equal to the amount realised from the disposal contemplated in paragraph (a)(ii) multiplied by 10.”.

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

Amendment of section 64F of Act 58 of 1962, as inserted by section 56 of act 60 of 2008

56. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 64F of the following section:

“Exemption from tax

64F. (1) A dividend is exempt from the dividends tax if the beneficial owner is—

[(a) a company which is a resident;]

- (b) the Government, a provincial administration or a municipality;
- (c) a public benefit organisation approved by the Commissioner in terms of section 30(3);
- (d) a trust contemplated in section 37A; **[or]**
- (e) an institution, board or body contemplated in section 10(1)(cA);
- (f) a fund contemplated in section 10(1)(d)(i) or (ii);
- (g) a person contemplated in section 10(1)(t); or
- (h) a shareholder in a registered micro business, as defined in the Sixth Schedule, paying that dividend, to the extent that the aggregate amount of dividends paid by that registered micro business to its shareholders during the year of assessment in which that dividend is paid does not exceed the amount of R200 000.

(2) A dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D is deemed to be exempt in terms of subsection (1) if the beneficial owner is—

- (a) a company which is a resident; or
- (b) a portfolio of a collective investment scheme in securities.

(3) A dividend contemplated in paragraph (b) of the definition of ‘dividend’ in section 64D is deemed to be exempt in terms of subsection (1) if the beneficial owner is a person that is not a resident.”.

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

Amendment of section 64G of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008

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

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

“Withholding of dividends tax [by company declaring dividend] in respect of certificated shares”;

(b) by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) Subject to subsections (2) and (3), [A] a company that declares and pays a dividend in respect of a certificated share must withhold from that payment any dividends tax imposed in respect of that dividend.

(2) **[Subject to subsection (4), a]** A company must not withhold any dividends tax from the payment of a dividend in respect of a certificated share if—

(a) **[the share in respect of which the dividend is paid is a certificated share and]** the beneficial owner—

(i) has by a date determined by the company submitted to the company—

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

(bb) a written undertaking to **[forthwith]** inform the company in writing within 30 days of ceasing to be the beneficial owner should the beneficial owner cease to be the beneficial owner; **[or] and**

(cc) where the beneficial owner is not the registered shareholder of the share in respect of which the dividend is paid, a written declaration of the name of the registered shareholder; or

(ii) forms part of the same group of companies, as defined in section 41, as the company that paid the dividend; **or**

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(b) the share in respect of which the dividend is paid is an uncertificated share].

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

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

(b) a written undertaking to **[forthwith]** inform the company in writing within 30 days of ceasing to be the beneficial owner should the beneficial owner cease to be the beneficial owner; and

(c) where the beneficial owner is not the registered shareholder of the share in respect of which the dividend is paid, a written declaration of the name of the registered shareholder,

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

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

Amendment of section 64H of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008

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

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

“Withholding of dividends tax [by intermediaries] in respect of uncertificated shares, portfolios of collective investment schemes in securities and insurers”;

(b) by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) **[An intermediary]** Subject to subsections (2), (2A) and (3), a regulated intermediary that pays a dividend that was declared by any other person in respect of an uncertificated share must withhold from that payment any dividends tax imposed in respect of that dividend.

(1A) Where a portfolio of a collective investment scheme in securities makes a distribution of any amount derived from a dividend

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contemplated in paragraph (a) of the definition of 'dividend' in section 64D and that distribution is made within 12 months of the date of the payment of the dividend to the portfolio, that distribution must, for the purposes of this section, be deemed to be a dividend paid by a regulated intermediary in respect of an uncertificated share.

(2) **[Subject to subsection (4), an intermediary]** A regulated intermediary must not withhold any dividends tax from the payment of a dividend that was declared by any other person in respect of an uncertificated share if—

(a) **[any other person has paid the tax;]**

(b) **[the share in respect of which the dividend is paid is a certificated share and]** the payment is made to the beneficial owner of the dividend and the beneficial owner has by a date determined by the regulated intermediary submitted to the regulated intermediary—

(i) a written declaration that the beneficial owner is exempt from the dividends tax; **[and]**

(ii) a written undertaking to **[forthwith]** inform the regulated intermediary in writing within 30 days of ceasing to be the beneficial owner should the beneficial owner cease to be the beneficial owner; and

(iii) where the beneficial owner is not the registered shareholder of the share in respect of which the dividend is paid, a written declaration of the name of the registered shareholder; or

(c) **[the share in respect of which the dividend is paid is an uncertificated share and—**

(i) **the person to whom the dividend is to be paid—**

(aa) is a person which the register of the intermediary indicates is exempt from the dividends tax, unless that person has by a date determined by the intermediary submitted to the intermediary a written declaration requiring that the intermediary withhold the dividends tax; or

(bb) is a regulated intermediary; or

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- (ii) the beneficial owner has by a date determined by the intermediary submitted to the intermediary—
- (aa) a written declaration that the beneficial owner is exempt from the dividends tax; and
 - (bb) a written undertaking to forthwith inform the intermediary in writing should the beneficial owner cease to be the beneficial owner]

the person to whom the dividend is to be paid is a regulated intermediary.

(2A)(a) If a regulated intermediary pays a dividend to an unregulated intermediary and the regulated intermediary is required to withhold dividends tax from that payment in terms of subsection (1), the regulated intermediary must reduce the amount of dividends tax to be so withheld by an amount determined in accordance with paragraph (b) if the unregulated intermediary submits a written declaration to the regulated intermediary by a date determined by the regulated intermediary—

- (i) indicating the percentage of that dividend that will be paid by the unregulated intermediary to persons that are exempt from the dividends tax in terms of section 64F(1) and 64F(2); and
- (ii) undertaking that the unregulated intermediary will be liable for any dividends tax not withheld on any portion of the dividend that is paid by the unregulated intermediary to any persons that are not persons contemplated in subparagraph (i).

(b) For the purposes of paragraph (a), the amount by which the amount of dividends tax must be reduced is an amount which bears to the total amount of the dividends tax that would have been payable but for paragraph (a) the same ratio as the amount of the dividend that will be paid to persons contemplated in paragraph (a)(i) bears to the total amount of the dividend.

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

- (a) a declaration in such form as may be prescribed by the Commissioner that the dividend is subject to a reduced rate of tax

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as a result of the application of an agreement for the avoidance of double taxation; **[and]**

(b) a written undertaking to **[forthwith]** inform the regulated intermediary in writing within 30 days of ceasing to be the beneficial owner should the beneficial owner cease to be the beneficial owner; and

(c) where the beneficial owner is not the registered shareholder of the share in respect of which the dividend is paid, a written declaration of the name of the registered shareholder,

the regulated intermediary must withhold the dividends tax as determined in accordance with the reduced rate.”; and

(c) by the addition of the following subsections:

“(5) For the purposes of subsection (1), if—

(a) a company pays a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D to a portfolio of a collective investment scheme in securities; and

(b) any amount derived from that dividend is not distributed by that portfolio within 12 months of the payment of the dividend to that portfolio,

that portfolio must be deemed to be a regulated intermediary and that amount must be deemed to be a dividend paid by that regulated intermediary on the last day of that period of 12 months to a natural person that is a resident.

(6) For the purposes of subsection (1), if a company pays a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D to an insurer as defined in section 29A, that insurer must be deemed to be a regulated intermediary and that dividend must, to the extent that the dividend is allocated to a fund contemplated in section 29A(4)(b), be deemed to be paid by that regulated intermediary on the date that the dividend is paid to that insurer to a natural person that is a resident.”.

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

Amendment of section 64I of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008

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59. (1) Section 64I of the Income Tax Act, 1962, is hereby amended by the insertion of the following subsection:

“(3A) In the determination of the STC credit of a company that is an insurer as defined in section 29A, the amount to be taken into account in terms of subsection (2)(b) in respect of dividends accrued to that company must be limited to dividends accrued on shares constituting an asset in the corporate fund of the company.”.

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

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008

60. (1) Section 64K of the Income Tax Act, 1962, is hereby amended by the addition to subsection (2) of the following paragraph:

“(c) Where a person has, in terms of—

(i) section 64G(2)(a)(i), 64H(2)(b) or 64Q(2)(a), not withheld dividends tax in respect of the payment of any dividend,

(ii) section 64G(3), 64H(3) or 64Q(3), withheld dividends tax in accordance with a reduced rate in respect of the payment of any dividend; or

the person must submit to the Commissioner any declaration submitted to the person by a beneficial owner and relied upon by the person in determining the amount of dividends tax so withheld, at the time and in the manner prescribed by the Commissioner.”.

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

Amendment of section 64L of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008

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

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

“Refund of tax in respect of certificated shares”;

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(b) by the substitution for subsections (1) and (2) of the following subsections:

“(1) If an amount is withheld by **[a person]** a company in terms of section 64G in respect of a dividend declared and paid to any other person and the **[declaration]** declarations and undertaking contemplated in section 64G(2)(a)(i)[,] or 64G(3) [**, 64H(2)(b), 64H(2)(c)(ii) or 64H(3)**] are submitted **[in respect of that dividend]** by the person to whom the dividend was paid within one year after payment of the dividend, so much of that amount as would not have been withheld had **[that declaration]** those declarations and that undertaking been submitted by the date contemplated in those sections is refundable to **[that other]** the person to whom the dividend was paid.

(2) The **[person]** company that withheld the **[initial]** amount as contemplated in subsection (1) must pay the amount that is refundable to **[that other]** the person to whom the dividend was paid in terms of that subsection to the extent of an amount of tax withheld in respect of the payment within that year of any subsequent dividend paid by that company.”.

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

Insertion of section 64M in Act 58 of 1962

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

“Refund of tax in respect of uncertificated shares

64M. (1) If an amount is withheld by a person in terms of section 64H and the declarations and the undertaking contemplated in subsection (2)(b) and (3) of that section in respect of that dividend are submitted by the person to whom the dividend was paid, so much of that amount as would not have been withheld had the declarations and the undertaking been submitted by the date contemplated in those subsections is refundable to the person to whom the dividend was paid.

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(2) The person that withheld the amount as contemplated in subsection (1) must pay the amount that is refundable in terms of that subsection to the person to whom the dividend was paid to the extent of an amount of tax withheld in respect of the payment of any subsequent dividend paid by that person from a dividend declared by any other person.

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

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

Insertion of section 64N in Act 58 of 1962

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

“Rebate in respect of foreign taxes on dividends

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

(2) The amount of the rebate contemplated in subsection (1) is equal to the amount of any tax paid to any sphere of government of any country other than the Republic, without any right of recovery by any person, on a dividend contemplated in subsection (1) that is not exempt from the dividends tax in terms of section 64F.

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

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

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

Insertion of section 64O in Act 58 of 1962

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

“Certain amounts deemed to be dividends

64O. (1) For the purposes of this section—

‘connected person’ means a connected person as defined in section 1:

Provided that in determining whether a person is a connected person in relation to any other person, no regard must be had to any share that is a listed share;

‘financial assistance’ means any loan or advance or the payment of a guarantee.

(2) For the purposes of section 64E(1), a company that is a resident must be deemed to have paid a dividend where—

(a) that company provides any financial assistance to a person that is a connected person in relation to the company;

(b) any adjustment to the taxable income or assessed loss of the company in the form of additional taxable income or reduced assessed loss is made in accordance with section 31 by virtue of any transaction with a connected person in relation to that company;

(c) that company ceases to be a resident; or

(d) that company is an issuer as contemplated in section 8F and any amount paid or payable by the company in terms of a hybrid debt instrument (as defined in that section) is disallowed as a deduction in terms of that section.

(3) A dividend that is deemed to have been paid in terms of subsection (2) is in the case of—

(a) financial assistance contemplated in paragraph (a) of that subsection, deemed to have been paid to the connected person contemplated in that paragraph;

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- (b) an adjustment contemplated in paragraph (b) of that subsection, deemed to have been paid to the connected person contemplated in that paragraph;
- (c) the company ceasing to be a resident as contemplated in paragraph (c) of that subsection, deemed to have been paid to a person that is not a resident and is not a shareholder in that company; or
- (d) an amount paid or payable as contemplated in paragraph (d) of that subsection, deemed to have been paid to the person to whom the amount is paid or payable;

(4) The amount of the dividend that is deemed to have been paid in terms of subsection (2) is in the case of—

- (a) financial assistance contemplated in paragraph (a) of that subsection, the amount of that financial assistance;
- (b) an adjustment contemplated in paragraph (b) of that subsection, the amount of that adjustment;
- (c) a company ceasing to be a resident as contemplated in paragraph (c) of that subsection, an amount equal to the market value of all of the assets of that company less the liabilities of the company; and
- (d) an amount paid or payable contemplated in paragraph (d) of that subsection, that amount.

(5) For the purposes of this Part, where a company is deemed to have paid a dividend in terms of subsection (2), that dividend must in the case of—

- (a) financial assistance contemplated in paragraph (a) of that subsection, be deemed to have been paid by that company on the date that that financial assistance is made available by the company;
- (b) an adjustment contemplated in paragraph (b) of that subsection, be deemed to have been paid by that company on the date that the Commissioner notifies the company of that adjustment;
- (c) a company ceasing to be a resident as contemplated in paragraph (c) of that subsection, be deemed to have been paid by that company on the date that the company ceases to be a resident;
- (d) an amount paid or payable contemplated in paragraph (d) of that subsection, be deemed to have been paid by that company on the date that the amount is incurred by that company.”.

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

Insertion of section 64P in Act 58 of 1962

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

“Exemptions in respect of amounts deemed to be dividends

64P. Notwithstanding section 64O(2)(a), where a company has provided financial assistance as contemplated in that section, the amount of that financial assistance will not be deemed to be a dividend to the extent that—

(a) the financial assistance is provided for the purpose of the provision of goods, services or rights in the ordinary course of trade of the business carried on by the company that is deemed to have declared the dividend and—

(i) the provision of the financial assistance arises in the ordinary course of business of the company; and

(ii) the terms of the financial assistance are not more favourable than to a member of the general public, not being an employee or a shareholder, in similar circumstances;

(b) that company carries on business as a money lender and—

(i) the provision of the financial assistance arises in the ordinary course of business of the company; and

(ii) the terms of the financial assistance are not more favourable than to a member of the general public, not being an employee or a shareholder, in similar circumstances;

(c) the financial assistance bears interest throughout the term of that financial assistance at a rate—

(i) that is not lower than the rate contemplated in paragraph (b) of the definition of ‘prescribed rate’ in section 1; and

(ii) that is not lower than to a member of the general public, not being an employee or a shareholder, in similar circumstances;

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(d) the financial assistance is provided to any controlled foreign company;

or

(e) the amount of the financial assistance is taken into account in the determination of—

(i) any donations tax payable by any person; or

(ii) the taxable income of the connected person to whom the dividend is deemed to have been paid during any year of assessment.”

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

Insertion of section 64Q in Act 58 of 1962

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

“Withholding of dividends tax in respect of deemed dividends

64Q. (1) Subject to subsection (2) and (3), a company that is deemed to have paid a dividend by virtue of the application of section 64O must withhold dividends tax on the amount of that dividend.

(2) A company that is deemed to have paid a dividend as contemplated in subsection (1) must not withhold dividends tax on the amount of that dividend if the person to whom the dividend was deemed to have been paid—

(a) has, before the date that the dividend is deemed to have been paid, submitted to the company a written declaration that the connected person is exempt from the dividends tax; or

(b) forms part of the same group of companies, as defined in section 41, as the company that paid the dividend.

(3) If the connected person to whom the dividend was deemed to have been paid has before the date that the amount of that dividend is deemed to have been paid submitted to the company a declaration in such form as may be prescribed by the Commissioner that that amount is subject to a reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation, the company must

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

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

Insertion of section 64R in Act 58 of 1962

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

“Distributions of shares and rights attaching to shares

64R. (1) Subject to subsection (2), a dividend paid by a company is exempt from the dividends tax if that dividend constitutes—

(a) a transfer of shares by that company; or

(b) an enhancement of the preferences, rights or other terms of any shares in that company.

(2) The provisions of subsection (1) do not apply where—

(a) the transfer or enhancement contemplated in that subsection results in a variation in the proportionate interest of any shareholder or any shares in that company; or

(b) the payment of the dividend contemplated in that subsection confers—

(i) a right to receive consideration other than a transfer of shares;

or

(ii) a right to receive different types of shares or different preferences, rights, limitations or terms in respect of shares.

(3) If a dividend paid by a company constitutes a transfer or an enhancement contemplated in subsection (1) and is, wholly or partially, not exempt in terms of that subsection—

(a) in the case of a transfer of shares, the contributed tax capital in relation to the class of shares in respect of which that transfer is made will be increased by so much of that dividend as is not exempt; or

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(b) in the case of an enhancement, the contributed tax capital in relation to the class of shares in respect of which the enhancement is made will be increased by so much of that dividend as is not exempt.”.

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

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

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

(a) by the deletion of the definition of “formula B”; and

(b) by the substitution in paragraph (b)(i) of the definition of “formula C” for item (bb) of the following item:

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

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(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2010 and applies in respect of lump sum benefits received or accrued on or after that date.

Substitution of paragraph 2 of Second Schedule to Act 58 of 1962, as amended by section 42 of Act 28 of 1997, section 48 of Act 30 of 1998, section 47 of Act 8 of 2007, section 62 of Act 35 of 2007, section 37 of Act 3 of 2008 and section 59 of Act 60 of 2008

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

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

(a) any amount received by or accrued to that person by way of a lump sum benefit derived in consequence of or following upon his or her retirement or death, less any deduction permitted under the provisions of paragraph 5; and

(b) any amount—

(iA) assigned in terms of a divorce order under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), that was granted—

(AA) before 13 September 2007, to the extent that the amount so assigned is deducted from that person’s minimum individual reserve in terms of section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or is so deducted in terms of section 37D(1)(d)(ii) of that Act as a result of the deduction contemplated in section 37D(1)(d)(i) of that Act; or

(BB) on or after 13 September 2007, to the extent that the amount so assigned is deducted from the minimum individual reserve of that person’s former spouse in terms of section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or is so deducted in terms of section 37D(1)(d)(ii) of that Act as a result of the deduction contemplated in section 37D(1)(d)(i) of that Act;

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(iB) that is transferred for the benefit of that person to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund of which that person is or previously was a member; and

(ii) other than an amount contemplated in item (a) and subitems (iA) and (iB), received by or accrued to that person by way of a lump sum benefit from or in consequence of membership or past membership of any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund,

less any deduction permitted under paragraph 6.

(2) An amount contemplated in subparagraph (1)(b) shall be deemed to accrue to a person—

(a) in the case of an amount contemplated in subparagraph (1)(b)(iA), on the date on which an election is made as contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or on the date on which the amount is paid in terms of section 37D(4)(b)(iv) of that Act; and

(b) in the case of an amount contemplated in subparagraph (1)(b)(iB), on the date of its transfer.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of—

- (a) paragraph 2(1)(a) of the Second Schedule to the Income Tax Act, 1962, to receipts and accruals on or after that date;
- (b) paragraph 2(1)(b)(iA) of the Second Schedule to the Income Tax Act, 1962, to amounts deducted on or after that date;
- (c) paragraph 2(1)(b)(iB) of the Second Schedule to the Income Tax Act, 1962, to amounts transferred on or after that date;
- (d) paragraph 2(1)(b)(ii) of the Second Schedule to the Income Tax Act, 1962, to receipts and accruals on or after that date; and
- (e) paragraph 2(2) of the Second Schedule to the Income Tax Act, 1962, to amounts deemed to have accrued on or after that date.

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

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

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

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

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

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

“Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member or past member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund **[shall be deemed to be a lump sum benefit**

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which accrued to such member or past member immediately prior to his or her death on the date of payment in terms of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), where applicable] must, on the date of payment of that lump sum benefit in terms of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), be deemed to have accrued to that member or past member immediately prior to the death of that member or past member”;

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

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

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

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

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

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

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

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

“(4) If a person is awarded an amount in terms of an order of divorce **[granted before 13 September 2007]**, that amount shall be deemed to have accrued to **[that person]** the member of the pension fund, pension preservation fund, provident fund, provident preservation fund or

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retirement annuity fund on the date on which that person makes an election contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or to that person on the date the amount is **[payable]** paid in terms of section 37D(4)(b)(iv) of that Act, to the extent that the amount is payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”; and

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

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

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

Substitution of paragraph 5 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 25 of Act 90 of 1964, section 35 of Act 88 of 1971, section 21 of Act 72 of 1963, section 35 of Act 88 of 1971, section 35 of Act 69 of 1975, section 27 of Act 113 of 1977, section 28 of Act 104 of 1980, section 48 of Act 94 of 1983, section 25 of Act 65 of 1986, section 37 of Act 20 of 2006 and section 51 of Act 8 of 2007

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

“5. (1) The deduction to be allowed for the purposes of paragraph 2(1)(a) is an amount equal to so much of—

(a) the taxpayer’s own contributions that did not rank for a deduction against the taxpayer’s income in terms of section 11(k) or (n) to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member;

(b) any amount transferred for the benefit of the taxpayer to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

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- (c) any amount that is deemed to have accrued to the taxpayer as contemplated in paragraph 2(2)(b);
- (d) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and
- (e) any other amounts in respect of which formula C applies, which have been paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the taxpayer's benefit by a pension fund contemplated in paragraph (a) or (b) of the definition of 'pension fund' in section 1, less the amount represented by symbol A when so applying that formula,
as has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining the amount to be included in that taxpayer's gross income.

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

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

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

Substitution of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 26 of Act 90 of 1964 and amended by section 18 of Act 104 of 1979, section 5 of Act 30 of 1984, section 32 of Act 141 of 1992, section 51 of Act 30 of 1998, section 38 of Act 20 of 2006, section 52 of Act 8 of 2007, section 42 of Act 3 of 2008 and section 64 of Act 60 of 2008

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

“6. (1) The deduction to be allowed for the purposes of paragraph 2(1)(b) is an amount equal to—

(a) in the case of—

(i) a lump sum benefit contemplated in paragraph 2(1)(b)(iA)(BB), so much of the benefit as is paid or transferred for the benefit of the taxpayer from a—

(aa) pension fund into any pension fund, pension preservation fund or retirement annuity fund;

(bb) pension preservation fund into any pension fund or pension preservation fund;

(cc) provident fund into any pension fund, provident fund, provident preservation fund or retirement annuity fund;

(dd) provident preservation fund into any provident fund or provident preservation fund; and

(ee) retirement annuity fund into any retirement annuity fund; and

(ii) a lump sum benefit contemplated in paragraph 2(1)(b)(iB), so much of the benefit as is paid or transferred for the benefit of the taxpayer from a—

(aa) pension fund into any pension fund, pension preservation fund or retirement annuity fund;

(bb) pension preservation fund into any pension fund or pension preservation fund;

(cc) provident fund into any pension fund, provident fund, provident preservation fund or retirement annuity fund;

(dd) provident preservation fund into any provident fund or provident preservation fund; and

(ee) retirement annuity fund into any retirement annuity fund; and

(b) in any other case, so much of the aggregate of—

(i) the taxpayer's own contributions that did not rank for a deduction against the taxpayer's income in terms of section 11(k) or (n) to

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any pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds of which he or she is or previously was a member;

- (ii) any amount transferred for the benefit of the taxpayer to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made as contemplated in section 37D(4)(b)(ii)(cc) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (iii) any amount that is deemed to have accrued to the taxpayer as contemplated in paragraph 2(1)(b)(iB);
- (iv) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and
- (v) any other amounts in respect of which formula C applies, which have been paid into such funds for the taxpayer's benefit by a pension fund contemplated in paragraph (a) or (b) of the definition of 'pension fund' in section 1, less the amount represented by symbol A when applying that formula, as has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining any amount to be included in that taxpayer's gross income.

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

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

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

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, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008 and section 66 of Act 60 of 2008

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

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

“ **‘provisional taxpayer’** means—

(a) any person (other than a company) who derives by way of income any amount which does not constitute—

(i) remuneration in terms of the definition of that expression as defined in this paragraph; or

(ii) an allowance or advance contemplated in section 8(1),

(c) any company; and

(d) any person who is notified by the Commissioner that he or she is a provisional taxpayer,

but shall exclude—

(aa) any public benefit organisation as contemplated in paragraph

(a) of the definition of ‘public benefit organisation’ in section

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30(1) that has been approved by the Commissioner in terms of section 30(3);

(bb) any recreational club as contemplated in the definition of 'recreational club' in section 30A(1) that has been approved by the Commissioner in terms of section 30A(2); and

(cc) any body or association contemplated in section 10(1)(e);”;

(b) by the substitution in the definition of “remuneration” for paragraph (cA) of the following paragraph:

“(cA) **[60]** 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii);”;

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

“(f) Any amount deemed to be income accrued to that person in terms of section 7(11).”.

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

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

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

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- (a) 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)] 2(1)(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 before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.”;

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

“(a) any contribution by the employee concerned to any pension fund **[or retirement annuity fund]** which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section 11 (k) **[or (n), as the case may be,]** having regard to the remuneration and the period in respect of which it is payable;”; and

- (c) by the insertion in subparagraph (4) of the following item after item (b):

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

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(2) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2010 and apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 Act 8 of 2007, section 66 of Act 3 of 2008 and section 68 of Act 60 of 2008

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

“(3) (a) The amount to be deducted or withheld in respect of employees’ tax from any lump sum to which paragraph (d) or (e) of the definition of ‘gross income’ in section 1 [of this Act] or section 7A [thereof] applies, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner’s determination of the amount to be deducted or withheld shall be final.

(b) Paragraph (a) does not apply to any amount required to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ and paragraph 2(1)(b)(iB) of the Second Schedule as a result of a transaction contemplated in section 14(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), other than an amount that is transferred for the benefit of the person to any provident fund as defined in paragraph 1 of the Second Schedule from any pension fund or pension preservation fund as defined in that paragraph.”

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as inserted by section 19 of Act 6 of 1963 and amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 85 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 23 of Act 70 of 1989, section 50 of Act 113 of 1993, section 37 of Act 36 of 1996, section 24 of Act 19 of 2001, section 34 of Act

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30 of 2002, section 58 of Act 74 of 2002, section 24 of Act 16 of 2004, section 47 of Act 32 of 2004, section 53 of Act 31 of 2005 and section 1 of Act 3 of 2008

78. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(d) for item (i) of the following item:

“(i) will not exceed **[R80 000]** R120 000;”.

Amendment of paragraph 19 of the Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005 and section 46 of Act 3 of 2008

79. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962 is hereby amended by the insertion of the following paragraph:

“(1A) For the purposes of paragraphs 19(1)(a) and 19(1)(b), the Commissioner may by notice in the *Gazette* prescribe the basis on which an estimate of taxable income in respect of a designated class of taxpayer must be made.”.

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

80. Paragraph 3 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (f)(iii) of the following proviso:

“: Provided that the provisions of this item do not apply to the holding of any shares in or interest in the equity of a company, if the company—
(aa) has not during any year of assessment carried on any trade; and
(bb) has not during any year of assessment owned assets, the total market value of which exceeds R5 000”.

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

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

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

Amendment of paragraph 12A of Seventh Schedule to Act 58 of 1962, as inserted by section 56 of Act 30 of 1998 and amended by section 59 of Act 31 of 2005

82. (1) Paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

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

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

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

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

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

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

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

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

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

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

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

85. (1) Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for item (b) of the following item:

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

(i) any foreign dividend that has been included in the income of the person disposing of the share and any foreign

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dividend which is exempt from tax in terms of section 10(1)(k)(ii)(cc);

- (ii) any dividend declared by a company contemplated in paragraph (e) of the definition of company; and
- (iii) any dividend contemplated in section 11(s)] that is exempt from the dividends tax in terms of section 64F, but excluding any dividend contemplated in section 11(s);”.

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

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

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

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

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

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

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

“**[to his or her deceased estate]** for an amount received or accrued equal to the market value of those assets at the date of that person’s death[, **and the deceased estate must be treated as having acquired**

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those assets at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a)].”;

(b) by the insertion of the following subparagraph:

“(1A) If any asset of a deceased person is treated as having been disposed of as contemplated in subsection (1) and—

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

(b) is transferred directly to an heir or legatee of the person, the heir or legatee must be treated as having acquired that asset at a cost equal to the market value of that asset,

which cost must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).”; and

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

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

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

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

88. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 43:

“Dividends treated as proceeds on the disposal of certain shares

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

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

‘resident company’ means a company that is a resident.

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

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

(b) if the shareholder—

(i) held the shares disposed of as a capital asset immediately before the disposal; and

(ii) is a connected person in relation to that resident company; and

(c) if the resident company (or any company that is a connected person in relation to the resident company) has, within a period of two years prior to the disposal, incurred any loan, advance or debt—

(i) owing to the person (or any connected person in relation to that person) acquiring the shares;

(ii) that is guaranteed or otherwise secured by the person (or any connected person in relation to that person) acquiring the shares; or

(iii) by reason of or in consequence of the disposal.

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

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

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

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

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

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

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- (a) so much of a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust as does not exceed R1 500 000; or
- (b) a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust if the proceeds from the disposal of that primary residence do not exceed R2 000 000.”; and
- (b) by the addition of the following subparagraph:
- “(4) Subparagraph (1)(b) does not apply where a natural person or a special trust disposes of an interest in a residence which is or was a primary residence, and that person or a beneficiary of that special trust or a spouse of that person or beneficiary—
- (a) was not ordinarily resident in that residence throughout the period on or after the valuation date during which that person or special trust held that interest; or
- (b) used that residence or a part thereof for the purposes of carrying on a trade for any portion of the period on or after the valuation date during which that person or special trust held that interest.”.

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

Insertion of paragraph 51A in Eighth Schedule to Act 58 of 1962

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

“Liquidation, winding up or deregistration of companies holding domestic residences

- 51A.** (1) For the purposes of this paragraph—
- ‘domestic residence’ means any residence that is used exclusively for domestic purposes;
- ‘domestic residence company’ means any company—

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(a) the shares of which are all, from 11 February 2009 until any distribution of a domestic residence by that company in terms of subparagraph (2), directly held by a natural person; and

(b) that holds as its sole asset a domestic residence that is and was throughout that period used as a domestic residence by that natural person;

'natural person' means a natural person alone or together with his or her spouse.

(2) Where a domestic residence company makes a distribution *in specie* before 31 December 2011 of a domestic residence to a natural person in anticipation of or in the course of the liquidation, winding up or deregistration of that domestic residence company—

(a) the domestic residence company must be deemed to have disposed of the domestic residence for an amount equal to the base cost of the domestic residence on the date of the disposal thereof;

(b) the domestic residence company and that natural person must, for the purposes of determining any capital gain or capital loss in respect of a disposal of the domestic residence by the natural person, be deemed to be one and the same person with respect to—

(i) the date of acquisition of the domestic residence by the domestic residence company and the amount and date of incurral by the domestic residence company of any expenditure in respect of the domestic residence allowable in terms of paragraph 20; and

(ii) any valuation of the domestic residence effected by the domestic residence company as contemplated in paragraph 29(4).

(3) Where a natural person disposes of any equity share in a domestic residence company as a result of the liquidation, winding up or deregistration of that domestic residence company, the natural person must disregard that disposal or distribution for the purposes of determining its aggregate capital gain or aggregate capital loss.

(4) The provisions of this section do not apply if the company and the natural person jointly elect that this section does not apply."

(2) Subsection (1) comes into operation on 1 January 2010 and applies to distributions made on or after that date and before 1 January 2012.

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

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

“Communications licence conversions

67D. (1) Where existing licences referred to in Chapter 15 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), are converted to new licences in terms of section 93 of that Act, a licensee of an existing licence or licences is deemed to have disposed of the existing—
(a) licence for an amount equal to the base cost of the licence; or
(b) licences for an amount equal to the aggregate of the base cost of the licences,
on the date of the conversion.

(2) The licensee of a new licence contemplated in subparagraph (1)—
(a) is deemed to have acquired the new licence—
(i) in the case where an existing licence is converted to a new licence, at a cost, recognised as such for the purposes of paragraph 20, equal to the expenditure incurred in respect of the existing licence;
(ii) in the case where two or more existing licences are converted to a new licence, at a cost, recognised as such for the purposes of paragraph 20, equal to the aggregate of the expenditure incurred in respect of the existing licences; and
(iii) in the case where an existing licence is converted to two or more new licences, at a cost, recognised as such for the purposes of paragraph 20, that bears to the expenditure incurred in respect of the existing licence the same ratio as the value of that new licence bears to the aggregate value of the new licences,
which cost must be treated as expenditure actually incurred by the licensee in respect of the new licence or licences for the purposes of paragraph 20; and
(b) is deemed to have incurred the cost contemplated in item (a) on the day immediately after the conversion.”.

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

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

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

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

“ **‘capital distribution’** means any distribution (or portion thereof) by a company that~~—~~

~~[(a)]~~ does not constitute a dividend; ~~[or~~

~~(b)]~~ **constitutes a dividend which is exempt from secondary tax on companies by reason of section 64B(5)(c);]**” and

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

“ **‘distribution’** means any amount transferred or applied by a company for the benefit of any person in respect of or by virtue of any share in that company, whether—

(a) by way of a distribution;

(b) as consideration for the acquisition of any share in that company;

(c) by way of release or relief from any obligation measurable in money;

(d) by way of an enhancement of the preferences, rights or other terms relating to that share; or

(e) by way of any other means.

but does not include any amount so transferred or applied by the company to the extent that the transfer or application constitutes a transfer of shares in that company;”.

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

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

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

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

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

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

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

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

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

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

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

(2) Subsection (1) comes into operation on [date of introduction].

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

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

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under a mandate by an entity established by law.”.

(2) Subsection (1) comes into operation on [date of introduction].

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

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

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under a mandate by an entity established by law.”.

(2) Subsection (1) comes into operation on [date of introduction].

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 and section 87 of Act 35 of 2007

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

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

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

(a)] that—

- (i) holds any oil and gas right; or
 - (ii) engages in exploration or production in terms of any oil and gas right; [or
 - (iii) **engages in refining of gas derived in respect of any oil and gas right held by that company; and**
- (b) **engages in no trade other than any of the activities contemplated in item (a);]”;**

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

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

- (a) exploration in terms of any oil and gas right;
- (b) production in terms of any oil and gas right; or
- (c) the leasing or disposal of any oil and gas right;”;

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

“ **‘production’** includes—

- (a) the separation of oil and gas condensates;
- (b) the drying of gas; and
- (c) the removal of non-hydrocarbon constituents,

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

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

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

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

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

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100. Paragraph 5 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) For purposes of determining the taxable income of an oil and gas company during any year of assessment, any assessed losses (as defined in section 20) in respect of exploration or production may only be set off against oil and gas income [, **and income derived from the refining of gas by that company to the extent those assessed losses do not exceed that income**].”.

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

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

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

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

Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of

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1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001, section 53 of Act 30 of 2002, section 41 of Act 12 of 2003, section 155 of Act 45 of 2003, section 36 of Act 16 of 2004, section 14 of Act 9 of 2005, section 36 of Act 9 of 2006, section 76 of Act 8 of 2007 and section 66 of Act 3 of 2008

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

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

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

Continuation of certain amendments of Schedules to Act 91 of 1964

103. (a) Subject to paragraph (b), every amendment or withdrawal of or insertion in Schedule No. 1 to 6 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act up to and including 30 June 2009, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

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

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

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

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

- (a) a transfer contemplated in subsection (8) taking place in the execution of a transaction entered into at the instance of the Registrar in the interest of the effective supervision of banks or the maintenance of a stable banking sector; or
- (b) any endorsement or alteration made to record such transfer, upon submission to the Registrar of Companies, or the Master, officer or person referred to in subsection (8), as the case may be, of a written confirmation by the Registrar of Banks that the Minister, on the recommendation of the last-mentioned Registrar and after consultation with the Commissioner for **[Inland Revenue]** the South African Revenue Service has consented to the waiver of such duties, fees or charges.”.

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

105. Section 8 of the Value-Added tax Act, 1991, is hereby amended—

- (a) by the substitution for subsection (25) of the following subsection:

“(25) For the purposes of this Act, where any goods or services are supplied by a vendor to another vendor, those vendors must for the purposes of that supply or subsequent supplies of those goods or services, be deemed to be one and the same person provided the provisions of section **[42,]** 44, 45 or 47 of the Income Tax Act, 1962, are complied with: Provided that—

- (i) this subsection shall not apply to a supply contemplated in section 45 of the Income Tax Act, unless—

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

(bb) the enterprise or part, as the case may be, disposed of as a going concern has been carried on in, or in relation to goods or services applied mainly for purposes of such enterprise or part, as the case may be, and partly for other purposes, such goods or services shall, where disposed of to such recipient, for the purposes of this paragraph and section 18A be deemed to form part of such enterprise or part, as the case may be, notwithstanding the provisions of paragraph (v) of the proviso to the definition of “enterprise” in section 1.”; and

(b) by the insertion of the following subsection:

“(25A) For the purposes of this Act, where—

(a) a supply, contemplated in subsection (25) results in a person ceasing to be a vendor;

(b) tax would have been deductible or payable by that person prior to the application of subsection (25); and

(c) either—

(i) the tax was not attributable before the application of subsection (25), to a tax period of that person; or

(ii) (aa) that person did not make a deduction contemplated in section 16(3); or

(bb) that person did not account for the tax in the tax period in which the tax was attributable as contemplated in section 16(4),

the person who continues to be a vendor shall be deemed to be entitled to the deduction or liable for the payment of tax, as the case may be.”.

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

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

(a) by the substitution in subsection (3)(b) for the words following subparagraph (ii) of the following words:

“and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded **[R20 000]** R50 000; or”; and

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

(c) that person intends to carry on any enterprise from a specified date, where that enterprise will be supplied to him as a going concern and the total value of taxable supplies made by the supplier of the going concern from carrying on that enterprise or part of the enterprise which will be supplied has exceeded **[R20 000]** R50 000 in the preceding period of 12 months; or

(d) that person is continuously and regularly carrying on an activity which, in consequence of the nature of that activity, can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time and where the total value of taxable supplies to be made can reasonably be expected to exceed **[R20 000]** R50 000 in a period of 12 months.”.

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

Amendment of Schedule 3 to Act 16 of 2004

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

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

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

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

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

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

“(3) Paragraph (j) of subsection (1), to the extent that it inserts paragraph (cO) into **[subsection (1), and paragraph (k) of subsection (1)]** section 10 of the Income Tax Act, 1962, shall come into operation on 1 April 2007 and shall apply in respect of any year of assessment commencing on or after that date.”; and

(b) by the addition of the following subsection:

“(4) Paragraph (k) of subsection (1) shall come into operation on 1 April 2007 and applies in respect of any year of assessment commencing on or after that date: Provided that the receipts and accruals of a company, society or other association of persons which was approved by the Commissioner under section 10(1)(d)(iv) of the Income Tax Act, 1962, will continue to be exempt from tax until the earlier of—

(a) the last year of assessment ending on or before 30 September 2010; or

(b) the year of assessment preceding the year of assessment during which section 10(1)(cO) applies to the receipts and accruals of that company, society or other association of persons.”.

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

Amendment of section 1 of Act 15 of 2007

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

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

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

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

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

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

Amendment of section 5 of Act 28 of 2008

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

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

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

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

“(b) so much of the amount allowed to be deducted from income in terms of the Income Tax Act (whether in that year or a previous year of assessment) in respect of the use of assets, or expenditure incurred, **[directly]** in respect of mineral resources transferred on or

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after 1 May 2009 to win, recover and develop those **[unrefined]** mineral resources to the condition specified in Schedule 2, **[as is included in the income of the extractor during that year of assessment in terms of section 8(4) of that Act (disregarding the exception in respect of section 15(a) of that Act), but not including an amount that is received or accrued from the disposal of assets the cost of which has in whole or in part been included in capital expenditure taken into account as mentioned in the definition of ‘capital expenditure incurred’ in section 36(11) of that Act,]**”.

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

“(c) (i) in the case of minerals refined to the condition specified in Schedule 1 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those refined mineral resources after those mineral resources were refined to that condition or any expenditure incurred to effect the disposal of that mineral resource **[amount received or accrued]**; or

(ii) in the case of mineral resources brought to the condition specified in Schedule 2 for those mineral resources, any deduction for expenditure incurred in respect of transport, insurance and handling of those unrefined mineral resources after those mineral resources were brought to that condition or any expenditure incurred to effect the disposal of that mineral resource **[amount received or accrued]**”; and

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

“(b) For purposes of determining “earnings before interest and taxes”, if the value of the refined proportion of a composite mineral resource **[as determined in terms of subsection (1)]** does not exceed 10 per cent of the total value of that composite resource, that composite mineral resource may be treated solely as an unrefined mineral resource, and if the value of the unrefined proportion of a composite mineral resource as so determined does not exceed 10

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per cent of the total value of that composite mineral resource, that composite mineral resource may be treated solely as a refined mineral resource.”.

(2) Subsection (1) comes into operation on 1 March 2010.

Amendment of section 9 of Act 28 of 2008

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

“(1) For purposes of this Act a disposal of a mineral resource by an extractor **[that forms part of the disposal of a going concern, or of a part of a going concern which is capable of separate operation, by that extractor to any other extractor]** is deemed not to be a disposal if the mineral resource is transferred to another extractor in terms of—

(a) an asset-for-share transaction referred to in section 42 of the Income Tax Act;

(b) an amalgamation transaction referred to in section 44 of the Income Tax Act;

(c) an intra-group transaction referred to in section 45 of the Income Tax Act;

(d) a liquidation distribution referred to in section 47 of the Income Tax Act;
or

(e) in terms of any transaction which would have constituted a transaction or distribution referred to in paragraphs (a) to (d) regardless of whether that extractor acquired that mineral resource as a capital asset or as trading stock,

where the extractor to whom the mineral resource is transferred, immediately after a transaction contemplated in paragraph (a), (b), (c), (d) or (e), qualifies for registration in terms of section 2(1)(a) of the Administration Act.”.

(2) Subsection (1) comes into operation on 1 March 2010.

Amendment of section 18 of Act 28 of 2008

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

“(2) This Act comes into operation—

(a) in respect of section 1 and subsection (1), on 1 November 2009;

(b) in respect of sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 and 17, subsection (2)(b) and Schedules 1 and 2, on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date; and

(c) in respect of sections 13 and 14, on 1 November 2009 and applies in respect of a mineral resource transferred on or after 1 March 2010.”.

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

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

Amendment of Schedule 2 to Act 28 of 2008

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

- (a) by the substitution for the unrefined condition of the mineral resource “limestone” of the following unrefined condition:

“Concentrate with a minimum of 54% to 90% CaCO₃”;
- (b) by the substitution in the “Platinum Group Metals” column for the unrefined condition of the following unrefined condition:

“150 ppm in concentrate together with all other metals and minerals contained in the concentrate” [**concentrate (150 ppm)**].”.
- (c) by the substitution for the unrefined condition of “other Minerals not listed elsewhere” of the following unrefined condition:

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

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

(2) Subsection (1) comes into operation on 1 March 2010.

Amendment of section 18 of Act 60 of 2008

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

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

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

Amendment of section 59 of Act 60 of 2008

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

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

Special measures relating to sharing of fuel levy revenue

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

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

Short title and commencement

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

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

DRAFT SCHEDULE 1

SPECIAL MEASURES RELATING TO SHARING OF GENERAL FUEL LEVY REVENUE

Definitions

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

General fuel levy revenue is direct charge

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

Allocation to which metropolitan municipality is entitled

3. (1) (a) The percentage contemplated in paragraph 2 is fixed at 23 per cent.
 (b) The Minister may annually revise the percentage specified in item (a) and must publish the revised percentage by notice in the *Gazette*.

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(2) (a) The Minister must for each financial year determine an equitable allocation to be made to each metropolitan municipality from the amount contemplated in paragraph 2.

(b) The Minister must publish the allocation contemplated in item (a) by notice in the *Gazette*.

Power to make regulations

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

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Appendix I

(Section 7)

RATES OF NORMAL TAX AND REBATES

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

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

- 2.

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

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3. The rate of tax referred to in section 7(1) of this Act to be levied in respect of the taxable income of a trust (other than a special trust or a public benefit organisation referred to in paragraph 7) in respect of any year of assessment ending on 28 February 2010 is 40 per cent.
4. The rate of tax referred to in section 7(1) of this Act to be levied in respect of the taxable income of a company (other than a public benefit organisation or recreational club referred to in paragraph 7 or a small business corporation referred to in paragraph 8) in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010 is, subject to the provisions of paragraph 13, as follows:
- (a) 28 per cent of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e) and (f) or in paragraphs 5 and 6) or, in the case of such a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 35 per cent;
- (b) in respect of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:
- $$y = 34 - \frac{170}{x}$$
- or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:
- $$y = 43 - \frac{215}{x}$$
- in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived

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(with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (c) in respect of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 28 per cent, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
 - (d) in respect of the taxable income derived by any company from carrying on long-term insurance business in respect of its—
 - (i) individual policyholder fund, 30 per cent; and
 - (ii) company policyholder fund and corporate fund, 28 per cent;
 - (e) in respect of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d) and (f)) derived by a company which is not a resident, 33 per cent; and
 - (f) in respect of the taxable income derived by a qualifying company contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero per cent.
5. The rate of tax referred to in section 7(1) of this Act to be levied in respect of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, in respect of any year of

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assessment commencing before 1 March 2009 and ending during the period of 12 months ending on 31 March 2010 is 33 per cent.

6. The rate of tax referred to in section 7(1) of this Act to be levied in respect of the taxable income of any personal service provider as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 March 2009 is 33 per cent.
7. The rate of tax referred to in section 7(1) of this Act to be levied in respect of the taxable income of any public benefit organisation that has been approved by the Commissioner in terms of section 30(3) of the Income Tax Act, 1962, or any recreational club that has been approved by the Commissioner in terms of section 30A(2) of that Act is 28 per cent—
 - (a) in the case of an organisation or club that is a company, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010; or
 - (b) in the case of an organisation that is a trust, in respect of any year of assessment ending on 28 February 2010.
8. The rate of tax referred to in section 7(1) of this Act to be levied in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010 is, subject to the provisions of paragraph 14, set out in the table below:

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

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| | |
|--|----------|
| | R300 000 |
|--|----------|

9. The rate of tax referred to in section 7(2) of this Act to be levied in respect of the taxable turnover of a person that is a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2010 is set out in the table below:

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

10. (a)(i) If a retirement fund lump sum withdrawal benefit accrues to a person in any year of assessment commencing on or after 1 March 2009, the rate of tax referred to in section 7(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—
- (aa) that retirement fund lump sum withdrawal benefit;
 - (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa); and
 - (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the

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retirement fund lump sum withdrawal benefit contemplated in subitem (aa),

is set out in the table below:

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

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

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

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

(b)(i) If a retirement fund lump sum benefit accrues to a person in any year of assessment commencing on or after 1 March 2009, the rate of tax referred to in section 7(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

(aa) that retirement fund lump sum benefit; and

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

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(cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa), is set out in the table below:

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

- (ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—
- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa); and
 - (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa).
11. The rates of tax set out in paragraphs 1, 3, 4, 5, 6, 7, 8, and 10 are the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.
12. The rate of tax set out in paragraph 9 is the rate required to be fixed by Parliament in accordance with the provisions of section 48B(1) of the Income Tax Act, 1962.

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

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Appendix II

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

(Section 101)

| Tariff Item | Tariff heading | Description | Rate of duty | |
|-------------|----------------|--|-------------------------------|-------------------------------|
| | | | Excise | Customs |
| 104.00 | | Prepared foodstuffs; beverages, spirits and vinegar; tobacco | | |
| 104.01 | 19.01 | Malt extract; food preparations of flour, groats, meal starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included | | |
| .10 | | Traditional beer powder as defined in Additional Note 1 to Chapter 19 | 34.7 c/kg | 34.7 c/kg |
| 104.10 | 22.03 | Beer made from malt | | |
| .10 | | Traditional beer as defined in Additional Note 1 to Chapter 22 | 7.82 c/l | 7.82 c/l |
| .20 | | Other | R46.41 /l of absolute alcohol | R46.41 /l of absolute alcohol |
| 104.15 | 22.04 | Wine of fresh grapes, including fortified wines; grape must, other than that of heading no. 20.09 | | |
| | 22.05 | Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances: | | |
| .02 | | Sparkling wine | R6.16 /l | R6.16 /l |
| .04 | | Unfortified wine | R1.98 /l | R1.98 /l |
| .06 | | Fortified wine | R3.72 /l | R3.72 /l |
| 104.17 | 22.06 | Other fermented beverages, (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included | | |
| .05 | | Traditional beer as defined in Additional Note 1 to Chapter 22 | 7.82 c/l | 7.82 c/l |
| .15 | | Other fermented beverages, unfortified | R2.33 /l | R2.33 /l |
| .17 | | Other fermented beverages, fortified | R4.73 /l | R4.73 /l |
| .22 | | Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages | R2.33 /l | R2.33 /l |
| .90 | | Other | R4.73 /l | R4.73 /l |
| 104.20 | 22.07 | Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength | | |
| | 22.08 | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages: | | |
| .10 | | Wine spirits, manufactured by the distillation of wine | R77.67 /l of absolute alcohol | R77.67 /l of absolute alcohol |
| .15 | | Spirits, manufactured by the distillation of any sugar cane product | R77.67 /l of absolute | R77.67 /l of absolute |

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| Tariff Item | Tariff heading | Description | Rate of duty | |
|-------------|----------------|---|-------------------------------|-------------------------------|
| | | | Excise | Customs |
| | | | alcohol | alcohol |
| .25 | | Spirits, manufactured by the distillation of any grain product | R77.67 /l of absolute alcohol | R77.67 /l of absolute alcohol |
| .29 | | Other spirits | R77.67 /l of absolute alcohol | R77.67 /l of absolute alcohol |
| .40 | | Liqueurs and other spirituous beverages | R77.67 /l of absolute alcohol | R77.67 /l of absolute alcohol |
| 104.30 | 24.02 | Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes | | |
| .10 | | Cigars, cheroots, and cigarillos, of tobacco or of tobacco substitutes | R1 951.43 /kg net | R1 951.43 /kg net |
| .20 | | Cigarettes, of tobacco or of tobacco substitutes | R3.85 /10 cigarettes | R3.85 /10 cigarettes |
| 104.35 | 24.03 | Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences: | | |
| .10 | | Cigarette tobacco and substitutes thereof | R183.04 /kg | R183.04 /kg |
| .20 | | Pipe tobacco and substitutes thereof | R100.10 /kg net | R100.10 /kg net |