

## ANNEXURE A

### RELEASE

The draft Taxation Laws Amendment Bill, 2013, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2013, as tabled in Parliament earlier this year.

The National Treasury invites members of the public to submit comments on the draft legislation by no later than 5 August 2013 to:

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REPUBLIC OF SOUTH AFRICA

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**TAXATION LAWS  
AMENDMENT BILL**

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

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(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 amend a provision;
- amend the **Estate Duty Act, 1955**, so as to amend a provision;
- amend the **Income Tax Act, 1962**, so as to amend, delete and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make new provision; and to effect textual and consequential amendments;
- amend the **Value-Added Tax Act, 1991**, so as to amend certain provisions;
- repeal the **Demutualisation Levy Act, 1998**;
- amend the **Securities Transfer Tax Act, 2007**, so as to amend a provision;
- amend the **Revenue Laws Amendment Act, 2007**, so as to amend a provision;
- amend the **Mineral and Petroleum Resources Royalty Act, 2008**, so as to amend certain provisions; and to amend Schedules;
- amend the **Mineral and Petroleum Resources Royalty (Administration) Act, 2008**, so as to amend certain provisions;
- amend the **Taxation Laws Amendment Act, 2011**, so as to amend certain provisions;
- amend the **Taxation Laws Amendment Act, 2012**, so as to amend certain provisions; and to effect technical corrections;
- make provision for special zero-rating in respect of goods and services supplied in certain circumstances;

and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### PART I

#### Interpretation

1. For the purposes of this Part any word or expression to which a meaning has been assigned in the **Transfer Duty Act, 1949** (Act No. 40 of 1949), bears the meaning so assigned unless the context otherwise indicates.

**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**

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of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002, section 1 of Act 45 of 2003, section 1 of Act 17 of 2009, section 1 of Act 7 of 2010 and section 1 of Act 24 of 2011

2. (1) Section 1 of the Transfer Duty Act, 1949 (Act No. 40 of 1949), is hereby amended by the substitution in the definition of “residential property company” for the words preceding paragraph (a) of the following words:

“ ‘**residential property company**’ means any company, other than a REIT as defined in section 1 of the Income Tax Act, 1962 (Act No 58 of 1962), that holds property that constitutes—”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of property acquired or interest or restriction in any property renounced 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, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007, section 1 of Act 60 of 2008, section 3 of Act 17 of 2009, section 3 of Act 7 of 2010, section 5 of Act 24 of 2011 and section 1 of Act 22 of 2012**

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

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

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

(b) by the substitution in subsection (1)(l) for subparagraph (iA) of the following subparagraph:

“(iA) a substitutive share-for-share transaction as contemplated in section 43 of that Act;”;

(c) by the insertion in subsection (1)(l) after subparagraph (iA) of the following subparagraph:

“(iB) an amalgamation transaction contemplated in section 44 of that Act;”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

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## PART II

### Interpretation

4. For the purposes of this Part any word or expression to which a meaning has been assigned in the Estate Duty Act, 1955 (Act No. 45 of 1955), bears the meaning so assigned unless the context otherwise indicates.

**Amendment of section 4 of Act 45 of 1955, as amended by section 2 of Act 59 of 1957, section 3 of Act 65 of 1960, section 9 of Act 71 of 1961, section 9 of Act 77 of 1964, section 3 of Act 81 of 1965, section 2 of Act 94 of 1967, section 5 of Act 92 of 1971, section 2 of Act 70 of 1975, section 1 of Act 104 of 1976, section 4 of Act 102 of 1979, section 11 of Act 106 of 1980, section 3 of Act 99 of 1981, section 5 of Act 81 of 1985, section 6 of Act 86 of 1987, section 10 of Act 87 of 1988, section 8 of Act 97 of 1993, section 3 of Act 20 of 1994, section 7 of Act 27 of 1997, section 14 of Act 30 of 1998, section 8 of Act 30 of 2000, section 4 of Act 30 of 2002, section 5 of Act 74 of 2002 and section 6 of Act 31 of 2005**

5. (1) Section 4 of the Estate Duty Act, 1955, is hereby amended by the substitution in paragraph (o) for the words following subparagraph (ii) of the following words:

“if such books, pictures, statuary or other objects of art have been lent under a notarial deed to the State or any local authority within the Republic [**or to any institution referred to in subparagraph (ii) of paragraph (h)**] for a period of not less than thirty years, and the deceased died during such period;”.

(2) Subsection (1) is deemed to have come into operation on 15 July 2001.

## PART III

### Interpretation

6. For the purposes of this Part any word or expression to which a meaning has been assigned in the Income Tax Act, 1962 (Act No. 58 of 1962), bears the meaning so assigned unless the context otherwise indicates.

**Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976,**

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section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, item 23 of Schedule to Act 28 of 2011 and section 2 of Act 22 of 2012

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

(a) by the insertion in subsection (1) after the definition of “average exchange rate” of the following definition:

“ **‘Banks Act’** means the Banks Act, 1990 (Act No. 94 of 1990);”;

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

“(b) any medical scheme registered under the provisions of the Medical Schemes Act[, **1998 (Act No. 131 of 1998)**];”;

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

“ **‘Collective Investment Schemes Control Act’** means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);”;

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

“ **‘Companies Act’** means the Companies Act, 2008 (Act No. 71 of 2008);”;

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

“(ii) portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of the public (as defined in section 1 of the Collective Investment Schemes Control Act[, **2002 (Act No. 45 of 2002)**]), are invited or permitted

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to contribute to and hold participatory interests in that portfolio through shares, units or any other form of participatory interest; or”;

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

“(iii) portfolio of a collective investment scheme in property that qualifies as a REIT; or”;

(g) by the substitution in subsection (1) in the definition of “connected person” for paragraph (c) of the following paragraph:

“(c) in relation to a member of any partnership or foreign partnership—

(i) any other member; and

(ii) any connected person in relation to any member of such partnership or foreign partnership”;

(h) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (i) of the following subparagraph:

“(i) any other company that would be part of the same group of companies as that company if the expression ‘at least 70 per cent of the equity shares of’ in paragraphs (a) and (b) of the definition of ‘group of companies’ in this section were replaced by the expression ‘more than 50 per cent of the equity shares **[of]** or voting rights in’”;

(i) by the substitution in subsection (1) in paragraph (d)(iv) of the definition of “connected person” for the words preceding item (aa) of the following words:

“any person, other than a company as defined in section 1 of the Companies Act[, **2008 (Act No. 71 of 2008)**,] who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20 per cent of—”;

(j) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (v) of the following subparagraph:

“(v) any other company if at least 20 per cent of the equity shares **[of]** or voting rights in the company are held by that other company, and no shareholder holds the majority voting rights in the company”;

(k) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (v) of the following subparagraph:

“(v) any other company if at least 20 per cent of the equity shares or voting rights in the company are held by that other company, and no **[shareholder]** holder of shares holds the majority voting rights in the company”;

(l) by the substitution in subsection (1) in paragraph (a) of the definition of “contributed tax capital” for the words preceding subparagraph (i) of the following words:

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“in the case of a foreign company [**that is not a resident and**] that becomes a resident on or after 1 January 2011, an amount equal to the sum of—”;

(m) by the insertion in subsection (1) after the definition of “co-operative” of the following definition:

“ **‘Copyright Act’** means the Copyright Act, 1978 (Act No. 98 of 1978);”;

(n) by the insertion in subsection (1) after the definition of “depreciable asset” of the following definition:

“ **‘Designs Act’** means the Designs Act, 1993 (Act No. 195 of 1993);”;

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

“ **‘domestic treasury management company’** means a company—

(a) incorporated or deemed to be incorporated by or under any law in force in the Republic;

(b) that has its place of effective management in the Republic; and

(c) that is not subject to exchange control restrictions by virtue of being registered with the financial surveillance department of the South African Reserve Bank in terms of section B.2(B)(vii) of the Exchange Control Rulings issued by the South African Reserve Bank;”;

(p) by the deletion in subsection (1) of the definition of “foreign equity instrument”;

(q) by the substitution in subsection (1) for paragraph (c) of the definition of “gross income” of the following paragraph:

“(c) any—

(i) amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered; or [**any**]

(ii) amount (other than an amount referred to in section 8(1)) received or accrued in respect of or by virtue of any employment or the holding of any office,

including any dividend in respect of an equity instrument as defined in section 8C(7) that has not vested in that person as contemplated in section 8C(3): Provided that—

[(i)](aa) the provisions of this paragraph shall not apply in respect of any benefit or advantage in respect of which the provisions of paragraph (i) apply;

[(ii)](bb) any amount received by or accrued to or for the benefit of any person in respect of services rendered or to be rendered by any other person shall for the purposes of this definition be deemed to have been received by or to have accrued to the said other person;”;

(r) by the substitution in subsection (1) in paragraph (d) of the definition of “gross income” for the words preceding subparagraph (i) of the following words:



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“any amount (other than an amount contemplated in paragraph (a)), including any voluntary award and any dividend in respect of an equity instrument as defined in section 8C(7) that has not yet vested in that person as contemplated in section 8C(3), received or accrued—”;

- (s) by the substitution in subsection (1) in paragraph (g) of the definition of “gross income” for subparagraph (iii) of the following subparagraph:

“(iii) for the use or right of use of any patent as defined in the Patents Act[, **1978 (Act No. 57 of 1978)**,] or any design as defined in the Designs Act[, **1993 (Act No. 195 of 1993)**,] or any trade mark as defined in the Trade Marks Act[, **1993 (Act No. 194 of 1993)**,] or any copyright as defined in the Copyright Act[, **1978 (Act No. 98 of 1978)**,] or any model, pattern, plan, formula or process or any other property or right of a similar nature;”;

- (t) by the addition in subsection (1) in the definition of “gross income” to paragraph (k) of the following proviso:

“: Provided that this paragraph must not apply to the extent that the amount constitutes gross income in terms of any other part of this definition”;

- (u) by the substitution in subsection (1) in the definition of “gross income” for the proviso of the following proviso:

“: Provided that where during any year of assessment [**the taxpayer**] a person has become entitled to any amount which is payable on a date or dates falling after the last day of such year, [**there**] that amount shall be deemed to have accrued to [**him**] the person during such year[—

**(a) if the taxpayer has on or before 23 May 1990 submitted a return of income drawn on the basis that the present value of such amount has accrued to him during such year, the present value of such amount; or**

**(b) in any other case, such amount:]”;**

- (v) by the deletion in subsection (1) in the definition of “gross income” of the further proviso;

- (w) by the substitution in subsection (1) for the definition of “JSE Limited Listings Requirements” of the following definition:

“**‘JSE Limited Listings Requirements’** means the JSE Limited Listings Requirements, 2003, made by the JSE Limited in terms of section 12 of the Securities Services Act[, **2004 (Act No. 36 of 2004)**];”;

- (x) by the substitution in subsection (1) for paragraph (a) of the definition of “listed company” of the following paragraph:

“(a) an exchange as defined in section 1 of the Securities Services Act[, **2004 (Act No. 36 of 2004)**,] and licensed under section 10 of that Act; or”;

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(y) by the substitution in subsection (1) for the definition of “listed share” of the following definition:

“ **‘listed share’** means a share that is listed on an exchange as defined in section 1 of the Securities Services Act[, **2004 (Act No. 36 of 2004),**] and licensed under section 10 of that Act;”;

(z) by the insertion in subsection (1) after the definition of “living annuity” of the following definition:

“ **‘Long-term Insurance Act’** means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);”;

(zA) by the insertion in subsection (1) before the definition of “mining for gold” of the following definitions:

“ **‘Medical Schemes Act’** means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

**‘Mineral and Petroleum Resources Development Act’** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;

(zB) by the insertion in subsection (1) after the definition of “municipality” of the following definition:

“ **‘municipal value’** means an amount determined in terms of section 46 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);”;

(zC) by the insertion in subsection (1) after the definition of “officer” of the following definition:

“ **‘Patents Act’** means the Patents Act, 1978 (Act No. 57 of 1978);”;

(zD) by the substitution in subsection (1) in the definition of “pension fund” for the words in paragraph (c) preceding the proviso of the following words:

“the Municipal Councillors Pension Fund provisionally registered under the Pension Funds Act[, **1956 (Act No. 24 of 1956),**] on 23 May 1988, or any fund (other than a retirement annuity fund, a pension preservation fund or a fund contemplated in paragraph (a) or (b)) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of **[the said] that Act—**”;

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

“(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of

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providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act[, 1956 (Act No. 24 of 1956)]; and”;

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

“(dd) that not more than one-third of the total value of the retirement interest (other than the value of any contribution made by a member of a provident fund to that provident fund prior to 1 March 2015 and of any fund return as defined in the Pension Funds Act in relation to that contribution) may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed [R50 000] R100 000 or where the employee is deceased;”;

(zG) by the insertion in subsection (1) after the definition of “pension fund” of the following definition:

“ **‘Pension Funds Act’** means the Pension Funds Act, 1956 (Act No. 24 of 1956);”;

(zH) by the substitution in subsection (1) in the definition of “pension preservation fund” for the words preceding the proviso of the following words:

“ **‘pension preservation fund’** means a pension fund organisation which is registered under the Pension Funds Act[, 1956 (Act No. 24 of 1956),] and which is approved by the Commissioner in respect of the year of assessment in question”;

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

“(iii) former members of a pension fund or nominees or dependants of that former member in respect of whom an “unclaimed benefit” as defined in the Pension Funds Act[, 1956 (Act No. 24 of 1956),] is due or payable by that fund; or”;

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

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

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

“(e) not more than one-third of the total value of the retirement interest (other than the value of any contribution made by a member of a provident fund to that provident fund prior

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to 1 March 2015 and of any fund return as defined in the Pension Funds Act in relation to that contribution) may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed ~~[R50 000]~~ R100 000 or where the member is deceased.”;

(zL) by the substitution in subsection (1) for the definitions of “portfolio of a collective investment scheme in participation bonds” and “portfolio of a collective investment scheme in property” respectively of the following definitions:

“ **‘portfolio of a collective investment scheme in participation bonds’** means any portfolio comprised in any collective investment scheme in participation bonds contemplated in Part VI of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002)] managed or carried on by any company registered as a manager under and for the purposes of that Part;

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

(zM) by the insertion after the definition of “portfolio of a collective investment scheme in property” of the following definitions:

“ **‘portfolio of a collective investment scheme in a restricted hedge fund’** means any restricted hedge fund business, in which a portfolio is held, that is declared by the Minister in accordance with section 63 of the Collective Investment Schemes Control Act to be a collective investment scheme;

**‘portfolio of a collective investment scheme in a retail hedge fund’** means any retail hedge fund business, in which a portfolio is held, that is declared by the Minister in accordance with section 63 of the Collective Investment Schemes Control Act to be a collective investment scheme;”;

(zN) by the substitution in subsection (1) for the definitions of “portfolio of a collective investment scheme in securities” and “portfolio of a declared collective investment scheme” respectively of the following definitions:

**‘portfolio of a collective investment scheme in securities’** means any portfolio comprised in any collective investment scheme in securities 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;

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

(zO) by the substitution in subsection (1) in the definition of “provident fund” for the words preceding the proviso of the following words:

“ ‘**provident fund**’ means any fund (other than a pension fund, pension preservation fund, provident preservation fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act[, 1956 (Act No. 24 of 1956)]”;

(zP) by the substitution in subsection (1) in the definition of “provident fund” for paragraph (a) of the proviso of the following paragraph:

“(a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes or mainly for the said purpose and also for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act[, 1956 (Act No. 24 of 1956)]; and”;

(zQ) by the substitution in subsection (1) in the definition of “provident fund” for paragraphs (a) and (b) of the proviso of the following paragraphs:

- “(a) that the fund is a permanent fund *bona fide* established [**solely**] for the purpose of providing [**benefits**] annuities for employees on retirement from employment or [**solely for the purpose of providing benefits**] for the dependants or nominees of deceased employees [**or deceased former employees or solely for a combination of such purposes**], or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and
- (b) that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of [**subparagraphs (aa), (bb), (cc), (ee) and (ff) of**] paragraph (ii) of the proviso to paragraph (c) of the definition of ‘pension fund’: Provided that the rules of the fund must provide that the total value of

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the retirement interest of a member of a provident fund who is 55 years of age or older on 1 March 2015 may be commuted for a single payment on that member's retirement from employment; and”;

(zR) by the substitution in subsection (1) in the definition of “provident preservation fund” for the words preceding the proviso of the following words:

“ **‘provident preservation fund’** means a pension fund organisation which is registered under the Pension Funds Act[, **1956 (Act No. 24 of 1956)**], and which is approved by the Commissioner in respect of the year of assessment in question”;

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

“(iii) former members of a provident fund or nominees or dependants of that former member in respect of whom an ‘unclaimed benefit’ as defined in the Pension Funds Act[, **1956 (Act No. 24 of 1956)**,] is due or payable by that fund; or”;

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

“(b) payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 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—”;

(zU) by the substitution in subsection (1) in the definition of “provident preservation fund” in paragraph (b) of the proviso for subparagraph (ii) of the following subparagraph:

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

(zV) by the deletion in subsection (1) in the definition of “provident preservation fund” of the word “and” at the end of paragraph (c) of the proviso;

(zW) by the addition in subsection (1) to the definition of “provident preservation fund” of the word “and” at the end of paragraph (d) of the proviso;

(zX) by the addition in subsection (1) in the definition of “provident preservation fund” after paragraph (d) of the proviso of the following paragraph:

“(e) that not more than one-third of the total value of the retirement interest (other than the value of any contribution made by a member of a provident fund to that provident fund prior to 1 March 2015 and of any fund return as defined in the Pension Funds Act in

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relation to that contribution) may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R100 000 or where the member is deceased.”;

(zY) by the insertion in subsection (1) after the definition of “provident preservation fund” of the following definition:

“ **‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

(zZ) by the substitution in subsection (1) for the definition of “Public Private Partnership” of the following definition:

“ **‘Public Private Partnership’** means a Public Private Partnership as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act[, 1999 (Act No. 1 of 1999)];”;

(zZa) by the substitution in subsection (1) for paragraph (a) of the definition of “regional electricity distributor” of the following paragraph:

“(a) a public entity regulated under the Public Finance Management Act[, 1999 (Act No. 1 of 1999)];”;

(zZb) by the substitution in subsection (1) in paragraph (b) of the definition of “REIT” for subparagraph (i) of the following subparagraph:

“(i) on an exchange (as defined in section 1 of the Securities Services Act[, 2004 (Act No. 36 of 2004),] and licensed under section 10 of that Act); and”;

(zZc) by the insertion in subsection (1) after the definition of “relative” of the following definition:

“ **‘remuneration factor’**, in relation to a year of assessment, means the remuneration, as defined in paragraph 1 of the Fourth Schedule, derived by an employee from an employer during the year of assessment immediately preceding that year of assessment: Provided that—

(a) where during a portion of such preceding year the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration factor as respects that employee must be deemed to be an amount which bears to the amount of the employee’s remuneration for the portion of such preceding year during which the employee was in such employment the same ratio as the period of 365 days bears to the number of days in such last-mentioned portion;

(b) where during the whole of such preceding year, the employee was not in the employment of the employer or of any associated institution in relation to the employer, the remuneration factor as respects that employee must be deemed to be an amount which

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bears to the employee's remuneration during the first month during which the employee was in the employment of the employer the same ratio as 365 days bears to the number of days during which the employee was in such employment;";

(zZd) by the substitution in subsection (1) in the definition of "retirement annuity fund" for the words preceding the proviso of the following words:

“**‘retirement annuity fund’** means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act[, **1956 (Act No. 24 of 1956)**];”;

(zZe) by the substitution in subsection (1) in paragraph (b) of the proviso to the definition of "retirement annuity fund" for paragraph (ii) of the following paragraph:

“(ii) that not more than one-third of the total value of the retirement interest (other than the value of any contribution made by a member of a provident fund to that provident fund prior to 1 March 2015 and of any fund return as defined in the Pension Funds Act in relation to that member) may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed [**R50 000**] R100 000 or where the member is deceased;”.

(zZf) by the substitution in subsection (1) in the definition of "retirement annuity fund" in paragraph (b)(xii) of the proviso for item (dd) of the following item:

“(dd) as is contemplated in Part V of the Policyholder Protection Rules promulgated in terms of section 62 of the [**Long-Term**] Long-term Insurance Act[, **1998 (Act No. 52 of 1998)**]; or”;

(zZg) by the deletion in subsection (1) of the definition of "retirement-funding employment";

(zZh) by the insertion in subsection (1) after the definition of "share" of the following definition:

“**‘Short-term Insurance Act’** means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);”;

(zZi) by the insertion in subsection (1) before the definition of "South African Revenue Service" of the following definition:

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

(zZj) by the substitution in subsection (1) in the definition of "special trust" for the words in paragraph (a) preceding the proviso of the following words:



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“solely for the benefit of one or more persons who is or are persons with a disability as defined in section [18(3)] 6B(1) where such disability incapacitates such person or persons from earning sufficient income for their maintenance, or from managing their own financial affairs”; (zZk) by the substitution in subsection (1) for the definition of “Tax Administration Act” of the following definition:

“ ‘**Tax Administration Act**’ means the Tax Administration Act, 2011 (Act No. 28 of 2011); (zZl) by the substitution in subsection (1) for the definition of “trade” of the following definition:

“ ‘**trade**’ includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act[, 1978 (Act No. 57 of 1978),] or any design as defined in the Designs Act[, 1993 (Act No. 195 of 1993),] or any trade mark as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993),] or any copyright as defined in the Copyright Act[, 1978 (Act No. 98 of 1978),] or any other property which is of a similar nature;”;

(zZm) by the insertion in subsection (1) after the definition of “trade” of the following definition:

“ ‘**Trade Marks Act**’ means the Trade Marks Act, 1993 (Act No. 194 of 1993);”

(zZn) by the insertion in subsection (1) after the definition of “trustee” of the following definition:

“ ‘**Value-Added Tax Act**’ means the Value-Added Tax Act, 1991 (Act No. 89 of 1991);”;

(zZo) by the substitution in subsection (1) for paragraph (a) of the definition of “water services provider” of the following paragraph:

“(a) a public entity regulated under the Public Finance Management Act[, 1999 (Act No. 1 of 1999)];”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 January 2014.

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 May 2011.

(4) Paragraph (e) of subsection (1) comes into operation on 1 January 2014.

(5) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

(6) Paragraph (g) of subsection (1) is deemed to have come into operation—

(a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October 2010; and

(b) in the case of any foreign partnership that is established or formed on or after 24 August 2010, as from the date of establishment or formation.

(7) Paragraphs (h) and (j) of subsection (1) are deemed to have come into operation on 1 January 2012.

(8) Paragraphs (i) and (k) of subsection (1) come into operation on 1 January 2014.

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(9) Paragraph (*l*) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of years of assessment commencing on or after that date.

(10) Paragraphs (*m*) and (*n*) of subsection (1) come into operation on 1 January 2014.

(11) Paragraph (*o*) of subsection (1) is deemed to have come into operation on 27 February 2013 and applies in respect of years of assessment commencing on or after that date.

(12) Paragraph (*p*) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(13) Paragraphs (*q*) and (*r*) of subsection (1) come into operation on 1 March 2014 and apply in respect of dividends declared on or after that date.

(14) Paragraph (*s*) of subsection (1) comes into operation on 1 January 2014.

(15) Paragraph (*t*) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.

(16) Paragraphs (*u*) and (*v*) of subsection (1) are deemed to have come into operation on 1 January 2013.

(17) Paragraphs (*w*), (*x*), (*y*), (*z*), (*zA*), (*zC*), (*zD*), (*zE*), (*zG*), (*zH*), (*zI*), (*zJ*), (*zL*), (*zN*), (*zO*), (*zP*), (*zR*), (*zS*), (*zT*), (*zU*), (*zY*), (*zZ*), (*zZa*), (*zZb*), (*zZd*) and (*zZf*) of subsection (1) come into operation on 1 January 2014.

(18) Paragraph (*zB*) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts paid or transferred during years of assessment commencing on or after that date.

(19) Paragraphs (*zF*), (*zK*), (*zQ*), (*zV*), (*zW*), (*zX*), (*zY*) and (*zZe*) of subsection (1) come into operation on 1 March 2015.

(20) Paragraph (*zM*) of subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date. (portfolios of CISs in hedge funds)

(21) Paragraph (*zZc*) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

(22) Paragraph (*zZg*) of subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made on or after that date.

(23) Paragraph (*zZh*) of subsection (1) comes into operation on 1 January 2014.

(24) Paragraph (*zZi*) of subsection (1) comes into operation on 1 October 2014.

(25) Paragraph (*zZj*) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

(26) Paragraphs (*zZk*), (*zZl*), (*zZm*), (*zZn*) and (*zZo*) of subsection (1) come into operation on 1 January 2014.

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**Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009, section 7 of Act 7 of 2010, section 8 of Act 24 of 2011 and section 271 read with item 28 of Schedule 1 to Act 28 of 2011**

8. (1) Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10) for paragraph (e) of the formula of the following paragraph:

“(e) ‘D’ represents an amount equal to so much of any current contribution to a pension fund, provident fund or retirement annuity fund as is allowable as a deduction in terms of section [11(n)(i)(aa)(A)] 11(k) solely by reason of the inclusion in the taxpayer’s income of any amount contemplated in paragraph (d)(i), (ii), (iii) or (iv):”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made on or after that date.

**Amendment of section 6A of Act 58 of 1962, as inserted by section 10 of Act 24 of 2011 and amended by section 3 of Act 13 of 2012, section 6 of Act 22 of 2012 and section 5 of Rates and Monetary Amounts and Amendment of Revenue Laws Act of 2013**

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

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

“(i) a medical scheme registered under the Medical Schemes Act[, 1998 (Act No. 131 of 1998)]; or”; and

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

“(4) For the purposes of this section a ‘**dependant**’ in relation to a taxpayer means a ‘dependant’ as defined in section 1 of the Medical Schemes Act[, 1998 (Act No. 131 of 1998)].”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Substitution of section 6A of Act 58 of 1962**

10. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 6A of the following section:

“**Medical scheme fees tax credit**

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**6A.** (1) A rebate, to be known as the medical scheme fees tax credit, must be deducted from the normal tax payable by a **[taxpayer] person** who is a natural person.

(2)(a) The medical scheme fees tax credit applies in respect of fees paid by the **[taxpayer] person** to—

- (i) a medical scheme registered under the Medical Schemes Act; or
- (ii) a fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered.

(b) The amount of the medical scheme fees tax credit must be—

- (i) R242, in respect of benefits to the **[taxpayer] person**;
- (ii) R484, in respect of benefits to the **[taxpayer] person** and one dependant; or
- (iii) R484, in respect of benefits to the **[taxpayer] person** and one dependant, plus R162 in respect of benefits to each additional dependant,

for each month in that year of assessment in respect of which those fees are paid.

(3) For the purposes of this section, any amount contemplated in subsection (2) that has been paid by—

- (a) the estate of a deceased **[taxpayer] person** is deemed to have been paid by the **[taxpayer] person** on the day before his or her death; or
- (b) an employer of the **[taxpayer] person** is, to the extent that the amount has been included in the income of that **[taxpayer] person** as a taxable benefit in terms of the Seventh Schedule, deemed to have been paid by that **[taxpayer] person**.

(4) For the purposes of this section a ‘**dependant**’ in relation to a **[taxpayer] person** means a ‘dependant’ as defined in section 1 of the Medical Schemes Act.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005, section 8 of Act 35 of 2007, section 4 of Act 3 of 2008, section 8 of Act 60 of 2008, section 10 of Act 17 of 2009 and section 15 of Act 24 of 2011**

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

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

“(ii) from the donor or any partnership of which the donor was at the time of such receipt or accrual a member or any private company of which the donor was at such time the sole or main [**shareholder**] holder of shares or one of the principal [**shareholders**] holders of shares,”;

(b) by the substitution in subsection (2C)(c) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) registered holder of a patent as defined in the Patents Act[, **1978 (Act No. 57 of 1978)**,] or any design as defined in the Designs Act[, **1993 (Act No. 195 of 1993)**,] or any trade mark as defined in the Trade Marks Act[, **1993 (Act No. 194 of 1993)**]; or

(ii) author of a work on which copyright has been conferred in terms of the Copyright Act[, **1978 (Act No. 98 of 1978)**,] or the owner of such a copyright by reason of assignment, testamentary disposition or operation of law; or”;

(c) by the substitution in subsection (11) for paragraphs (a) and (b) of the following paragraphs:

“(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),”;

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of section 8 of Act 58 of 1962 as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, section 5 of Act 3 of 2008, section 9 of Act 60 of 2008, section 11 of Act 17 of 2009, section 10 of Act 7 of 2010, section 16 of Act 24 of 2011 and section 9 of Act 22 of 2012**

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

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

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“There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), (p) and (q), [section 11D(1),] section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13bis(7), section 15(a) or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment”;

(b) by the addition to subsection (4)(a) after paragraph (ii) of the proviso of the following paragraph:

“(iii) previously taken into account as an amount that is deemed to have been recovered or recouped in terms of section 19(4), (5) or (6);”;

(c) by the substitution in subsection (4) for paragraph (b) 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.”;

(d) by the deletion in subsection (4) of paragraph (dB);

(e) by the substitution in subsection (4)(k) for subparagraph (ii) of the following subparagraph:

“(ii) in the case of a company, transferred in whatever manner or form any asset to any **[shareholder of]** holder of a share in that company; or”.

(f) by the deletion in subsection (4) of paragraphs (o) and (p);

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

“(bA) If after the termination **[on or after 1 September 1983]** by the effluxion of time or otherwise of a lease of property consisting of corporeal movable goods or of any machinery or plant in respect of which the lessor under such lease was entitled to any allowance under the provisions of this Act, the person who was the lessee under such lease (hereinafter referred to as the former lessee) is, with the express or implied consent or acquiescence of the person who was the lessor under such lease (hereinafter referred to as the former lessor) or of the owner of the property, allowed to use, enjoy or deal with the property as the former lessee may deem fit—

(i) without the payment of any consideration; or

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(ii) in the case of a lease [**entered into on or after 1 September 1983,**] without the payment of any rental or other consideration or subject to the payment of any consideration which is nominal in relation to the fair market value of the property, the former lessee shall be deemed for the purposes of paragraph (b) to have acquired the property for no consideration and, if the property was owned by the former lessor, the fair market value thereof shall, unless and until that value is otherwise determined to the satisfaction of the Commissioner, be deemed for the said purposes to be the cost to the former lessor of the property (or, where the said lease was a financial lease [**as defined in section 1 of the Sales Tax Act, 1978 (Act No. 103 of 1978)**] contemplated in paragraph (b) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the cash value as defined in that Act of the property [**contemplated in paragraph 2 of Schedule 4 to the said Act**], less a depreciation allowance calculated in accordance with paragraph (bB)(i) for the period from the commencement to the termination of the lease.”;

(h) by the deletion in subsection (5)(bB) of the proviso to subparagraph (ii);

(i) by the deletion in subsection (5)(bB) of subparagraph (v);

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 October 2012 and applies in respect of amounts in respect of expenditure incurred in respect of research and development that are recovered or recouped on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2014.

(5) Paragraphs (d) and (e) of subsection (1) come into operation on 1 January 2014.

(6) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of government grants received on or after that date.

(7) Paragraphs (g), (h) and (i) of subsection (1) are deemed to have come into operation on 1 January 2013.

## **Repeal of section 8A of Act 58 of 1962**

**13.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 8A.

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of years of assessment commencing on or after that date.

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**Amendment of section 8C of Act 58 of 1962, as inserted by section 7 of Act 96 of 1981 and amended by section 7 of Act 121 of 1984, section 7 of Act 101 of 1990, section 8 of Act 32 of 2004, section 12 of Act 31 of 2005, section 7 of Act 20 of 2006, section 11 of Act 35 of 2007, section 11 of Act 60 of 2008, section 12 of Act 7 of 2010 and section 19 of Act 24 of 2011**

14. (1) Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for paragraph (a) of the definition of “market value” of the following paragraph:

“(a) of a private company [**contemplated in section 20 of**] as defined in the Companies Act[, **1973 (Act No. 61 of 1973),**] or a company that would be regarded as a private company if it were incorporated under that Act, means an amount determined as its value in terms of a method of valuation—”.

(2) Subsection (1) is deemed to have come into operation on 1 May 2011 and applies in respect of equity instruments acquired on or after that date.

**Amendment of section 8EA of Act 58 of 1962, as inserted by section 12 of Act 22 of 2012**

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

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

“(b) that is an equity share, if [**the**] an amount of any dividend or foreign dividend in respect of that share is based on or determined with reference to a specified rate of interest or the time value of money;”;

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

“ ‘**qualifying purpose**’, in relation to the funds derived from the issue of a preference share, means one or more of the following purposes:”;

(c) by the substitution in subsection (1) in paragraph (b)(i) of the definition of “qualifying purpose” for item (aa) of the following item:

“(aa) the direct or indirect acquisition of an equity share by any person in an operating company, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that preference share;”.

(d) by the substitution in subsection (1) for paragraph (c) of the definition of “qualifying purpose” of the following paragraph:



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“(c) the direct or indirect acquisition by any person or a redemption by any person of any other preference share if—

- (i) that other preference share was issued for any purpose contemplated in **[paragraph (a), (b), this paragraph or paragraph (d)]** this definition; and
- (ii) the amount received by or accrued to the issuer of that preference share as consideration for the issue of that preference share does not exceed the amount outstanding in respect of that other preference share being acquired or redeemed, being the sum of—
  - (aa) that amount; and
  - (bb) any amount of dividends, foreign dividends or interest accrued in respect of that other preference share; or”;

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

“(d) the payment by any person of any dividend or foreign dividend in respect of **[a]** the other preference share contemplated in paragraph (c);”;

(f) by the deletion in subsection (1) of the proviso to the definition of “third-party backed share”;

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

“(3)(a) Where the funds derived from the issue of a preference share were applied for a qualifying purpose, in determining whether—

- (i) an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that share has an enforcement right in respect of that share and that right is exercisable; or
- (ii) an enforcement obligation is enforceable in respect of that share, no regard must be had to any arrangement in terms of which that obligation is enforceable, against the persons contemplated in paragraph (b);

(b) For the purpose of the determination contemplated in paragraph (a) no regard must be had to the following persons:

- (i) the operating company to which that qualifying purpose relates;
- (ii) any issuer of a preference share if that preference share was issued for the purpose of the direct or indirect acquisition by any person of an equity share in an operating company to which that qualifying purpose relates;
- (iii) any other person that directly or indirectly holds at least 20 per cent of the equity shares in—
  - (aa) the operating company contemplated in subparagraph (i);

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(bb) that person; or

(cc) the issuer contemplated in subparagraph (ii);

(iv) any company that forms part of the same group of companies as—

(aa) the operating company contemplated in subparagraph (i);

(bb) that person; or

(cc) the issuer contemplated in subparagraph (ii);

(v) any natural person; or

(vi) any organisation—

(aa) which is—

(A) a non-profit company as defined in section 1 of the Companies Act; or

(B) a trust or association of persons; and

(bb) if—

(A) all the activities of that organisation are carried on in a non-profit manner;  
and

(B) none of the activities of that organisation are intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of that organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.”.

(2) Subsection (1) is deemed to have come into operation—

(a) in the case of dividends or foreign dividends received in cash by any person during any year of assessment of that person that commences on or after 1 January 2013, on 1 April 2012 and applies in respect of any dividend or foreign dividend so received if that dividend or foreign dividend—

(i) accrued to that person on or after 1 April 2012; and

(ii) is received by that person on or after a date three months after the date on which that dividend or foreign dividend accrued to that person; or

(b) in the case of dividends or foreign dividends—

(i) received by or accrued to any person; and

(ii) that are not received by and accrued to that person as contemplated in paragraph (a), on 1 January 2013 and applies in respect of any dividend or foreign dividend so received and accrued during years of assessment of that person that commence on or after that date.

**Substitution of section 8F of Income Tax Act 58 of 1962**

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16. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 8F of the following section:

**“Interest on hybrid debt instruments deemed to be dividends *in specie***

**8F.** (1) For the purposes of this section—

**‘instrument’** means any form of interest-bearing arrangement or debt;

**‘interest’** means interest as defined in section 24J;

**‘issue’**, in relation to an instrument, means the creation of a liability to pay an amount in terms of that instrument;

**‘hybrid debt instrument’** means any instrument in respect of which a company that is a resident owes an amount during a year of assessment if in terms of any arrangement defined in section 80L—

(a) that company is not obliged to redeem the instrument within 30 years from the date of issue of the instrument,

excluding any instruments payable on demand;

Provided that, for purposes of this paragraph, where the company has the right to—

(aa) convert that instrument to; or

(bb) exchange that instrument for,

a financial instrument other than a share, that conversion or exchange will be deemed to be an arrangement in respect of that instrument;

(b) the company is in that year of assessment entitled to—

(i) convert that amount (or any part thereof) in any year of assessment to; or

(ii) exchange that amount (or any part thereof) in any year of assessment for,

shares in that company or in any other company that forms part of the same group of companies as that company; or

(c) the obligation to pay an amount in respect of that instrument is conditional upon the market value of the assets of the company not being less than the liabilities of the company;

**‘redeem’**, in relation to an instrument, means the discharge of all liability to pay all amounts in terms of that instrument.

(2) Any amount of interest which is, during a year of assessment—

(a) incurred by the company, in respect of a hybrid debt instrument—

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- (i) is deemed for the purposes of this Act to be a dividend *in specie* declared and paid on the last day of the year of assessment by the company; and
- (ii) is not deductible in terms of this Act; and
- (b) accrued to the person to whom the amount is owed, in respect of a hybrid debt instrument, is deemed to be a dividend *in specie* accrued on the last day of the company's year of assessment contemplated in paragraph (a)(i) to that person for purposes of this Act.
- (3) This section does not apply to any instrument—
  - (a) in respect of which all amounts are owed by a small business corporation as contemplated in section 12E;
  - (b) that constitutes a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012)—
    - (i) owed by a bank as defined in section 1 of that Act; or
    - (ii) owed by a controlling company in relation to that bank,  
unless the instrument or amounts owing in respect of the instrument are owed to a connected person in relation to that bank to the extent that the aggregate debt issued to that connected person exceeds—
      - (aa) 5 per cent of the overall tier 1 capital instrument of that bank; or
      - (bb) 5 per cent of the overall tier 2 capital instrument of that bank;
  - (c) of any class that is subject to approval by the Registrar—
    - (i) contemplated in the Short-term Insurance Act in accordance with the conditions that the Registrar determines, in terms of section 23(a)(i) of that Act which is owed by a short-term insurer defined in that Act; or
    - (ii) contemplated in the Long-term Insurance Act in accordance with the conditions that the Registrar determines in terms of section 24(a)(i) of that Act which is owed by a long-term insurer defined in that Act;  
unless the instruments of that class are owed to a connected person in relation to that short-term insurer or long-term insurer, to the extent that the class of instruments issued by that connected person exceeds 5 per cent or more of any amounts owing by that short-term insurer or long-term insurer in respect of that class of instruments; or
  - (d) held by a pension fund or provident fund where that fund—
    - (i) holds all of the shares in the company that issued that instrument; and
    - (ii) acquired those shares in that company and that instrument before 1 January 2013.”.

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(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of amounts incurred or accrued on or after that date.

## **Amendment of section 8F in Act 58 of 1962**

17. (1) Section 8F of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (3) of paragraph (d).

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of amounts accrued on or after that date.

## **Insertion of section 8FA in Act 58 of 1962**

18. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 8F of the following section:

**“Hybrid interest deemed to be dividends *in specie***

**8FA.** (1) For the purposes of this section—

**‘instrument’** means any form of interest-bearing arrangement or debt;

**‘interest’** means interest as defined in section 24J;

**‘issue’**, in relation to an instrument, means the creation of a liability to pay or the right to receive an amount in terms of that instrument;

**‘hybrid interest’** means any interest in respect of a debt owed by any company that is a resident if—

(a) the amount of that interest is not determined with reference to—

(i) a specified rate of interest; or

(ii) the time value of money; or

(b) the obligation to pay an amount in respect of that instrument is conditional upon the market value of the assets of the company being equal to or exceeding the liabilities of the company.

(2) Any amount of interest which is, during a year of assessment—

(a) incurred by the company, in respect of hybrid interest—

(i) is deemed for the purposes of this Act to be a dividend *in specie* declared and paid on the last day of the year of assessment by the company; and

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(ii) is not deductible in terms of this Act; and

(b) accrued to the person to whom the amount is owed, in respect of the hybrid interest, is deemed to be a dividend *in specie* accrued on the last day of the company's year of assessment contemplated in paragraph (a)(i) to that person for purposes of this Act.

(3) This section does not apply to any interest—

(a) in respect of which all amounts are owed by a small business corporation as contemplated in section 12E;

(b) in relation to a tier 1 or tier 2 capital instrument referred to in the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in *Government Gazette* No. 35950 of 12 December 2012)—

(i) owed by a bank as defined in section 1 of that Act; or

(ii) owed by a controlling company in relation to that bank,

unless the amounts owing in respect of the instrument are owed to a connected person in relation to that bank to the extent that the aggregate debt issued to that connected person exceeds—

(aa) 5 per cent of the overall tier 1 capital instrument of that bank; or

(bb) 5 per cent of the overall tier 2 capital instrument of that bank;

(c) of any class that is subject to approval by the Registrar—

(i) contemplated in the Short-term Insurance Act in accordance with the conditions that the Registrar determines, in terms of section 23(a)(i) of that Act which is owed by a short-term insurer defined in that Act; or

(ii) contemplated in the Long-term Insurance Act in accordance with the conditions that the Registrar determines in terms of section 24(a)(i) of that Act which is owed by a long-term insurer defined in that Act;

unless the instruments of that class are owed to a connected person in relation to that short-term insurer or long-term insurer, to the extent that the class of instruments issued by that connected person exceeds 5 per cent or more of any amounts owing by that short-term insurer or long-term insurer in respect of that class of instruments; or

(d) held by a pension fund or provident fund where that fund—

(i) holds all of the shares in that company that issued that instrument; and

(ii) acquired those shares in that company and that instrument before 1 January 2013.”

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of amounts incurred or accrued on or after that date.

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## Amendment of section 8FA in Act 58 of 1962

19. (1) Section 8FA of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (3) of paragraph (d).

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of amounts accrued on or after that date.

## Amendment of section 9 of Act 58 of 1962, as substituted by section 22 of Act 24 of 2011

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

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

“constitutes interest as defined in section 24J [**or deemed interest as contemplated in section 8E(2)**] where that interest—”;

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

“(ii) that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act[, 1999 (Act No. 1 of 1999)];”;

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

“(j) constitutes an amount received or accrued in respect of the disposal of an asset that constitutes immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property contemplated in paragraph 2 of the Eighth Schedule and that property is situated in the Republic;”;

(d) by the substitution in subsection (3) at the end of paragraph (a) for the expression “; and” of a full stop; and

(e) by the deletion in subsection (3) of paragraph (b).

(2) Paragraph (a) of subsection (1) is deemed to have come into operation—

(a) in the case of dividends or foreign dividends received in cash by any person during any year of assessment of that person that commences on or after 1 January 2013, on 1 April 2012 and applies in respect of any dividend or foreign dividend so received if that dividend or foreign dividend—

(i) accrued to that person on or after 1 April 2012; and

(ii) is received by that person on or after a date three months after the date on which that dividend or foreign dividend accrued to that person; or

(b) in the case of dividends or foreign dividends—

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- (i) received by or accrued to any person; and
- (ii) that are not received by and accrued to that person as contemplated in paragraph (a), on 1 January 2013 and applies in respect of any dividend or foreign dividend so received and accrued during years of assessment of that person that commence on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014.

(4) Paragraphs (c), (d) and (e) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

## **Repeal of section 9B of Act 58 of 1962**

**21.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 9B.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008, section 15 of Act 7 of 2010, section 24 of Act 24 of 2011 and section 13 of Act 22 of 2012**

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

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

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

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

“ ‘**equity share**’ includes a participatory interest in a portfolio of a collective investment scheme in securities and a portfolio of a collective investment scheme in a retail hedge fund;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date.

## **Insertion of section 9CA in Act 58 of 1962**



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

**“Circumstances in which certain amounts received or accrued from the disposal of participatory interests are deemed to be income**

**9CA. Any amount received by or accrued to a person during any year of assessment from the disposal of a participatory interest in a portfolio of a collective investment scheme in a—**  
**(a) restricted hedge fund; and**  
**(b) retail hedge fund where that person immediately prior to such disposal had not been the owner of that participatory interest for a continuous period of at least three years,**  
**is deemed in relation to that person to be an amount of gross income received by or accrued to that person at any time during that year of assessment.”**

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date.

**Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, section 9 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, section 16 of Act 7 of 2010, section 25 of Act 24 of 2011 and section 14 of Act 22 of 2012**

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

- (a) by the deletion in subsection (1) in the definition of “foreign business establishment” of the word “or” at the end of paragraph (d);
- (b) by the insertion in subsection (1) in the definition of “foreign business establishment” of the word “or” at the end of paragraph (e);
- (c) by the addition in subsection (1) to the definition of “foreign business establishment” after paragraph (e) of the following paragraph:

**“(f) a South African ship as defined in section 12Q engaged in international shipping as defined in that section;”**

- (d) by the substitution in subsection (2) in paragraph (C)(i) of the proviso for items (aa) and (bb) of the following items:

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“(aa) a linked policy as defined in section 1 of the **[Long-Term] Long-term Insurance Act[, 1998 (Act No. 52 of 1998)]**; or

(bb) a policy as defined in section 29A, other than a policy contemplated in item (aa), of which the amount of the policy benefits as defined in the **[Long-Term] Long-term Insurance Act[, 1998 (Act No. 52 of 1998),]** is not guaranteed by the insurer and is to be determined wholly by reference to the value of particular assets or categories of assets; and”;

(e) by the substitution in subsection (6) for the proviso of the following proviso:

“: Provided that any exchange item denominated in any currency other than the functional currency of that controlled foreign company shall be deemed not to be attributable to any permanent establishment of the controlled foreign company if the functional currency is the currency of a country which has an official rate of inflation of 100 per cent or more for that foreign tax year”;

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

“(c) is attributable to any policyholder that is not a resident or a controlled foreign company in relation to a resident in respect of any policy issued by a company licensed to issue any long-term policy as defined in the Long-term Insurance Act[, **1998 (Act No. 53 of 1998),]** in its country of residence;”;

(g) by the substitution in subsection (9)(d) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) the withholding tax on interest in terms of **[Part IA] Part IVA; [or]**

(ii) the withholding tax on royalties in terms of **[Part IVA,] Part IVB; or**”.

(h) by the insertion in subsection (9)(d) after subparagraph (ii) of the following subparagraph:

“(iii) the withholding tax on service fees in terms of Part IVC.”.

(i) by the substitution in subsection (9A)(a)(iii)(cc) for the words following subitem (B) of the following words:

“other than amounts in respect of which paragraphs [(e)] (c) to (fB) of subsection (9) apply or amounts derived from the activities of a treasury operation or a captive insurer, exceeds five per cent of the total of all amounts received by or accrued to the controlled foreign company that are attributable to that foreign business establishment, other than amounts in respect of which paragraphs (c) to (fB) of subsection (9) apply or amounts derived from the activities of a treasury operation or a captive insurer”;

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 January 2014 and apply in respect of years of assessment commencing on or after that date.

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(3) Paragraphs *(d)* and *(f)* of subsection (1) come into operation on 1 January 2014.

(4) Paragraph *(e)* of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

(5) Paragraphs *(g)* and *(h)* of subsection (1) come into operation on 1 January 2015 and apply in respect of amounts that are paid or become due and payable on or after that date.

(6) Paragraph *(i)* comes into operation on 1 January 2014 and applies in respect of foreign tax years ending during years of assessment commencing on or after that date.

## **Repeal of section 9G of Act 58 of 1962**

**25.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 9G.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 9H of Act 58 of 1962, as substituted by section 17 of Act 22 of 2012**

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

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

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

“*(c)* any asset which is, after the person ceases to be a resident or a controlled foreign company as contemplated in subsection (2) or (3), attributable to a permanent establishment of that person in the Republic, if a taxpayer reference number as defined in the Tax Administration Act has been allocated to that person;”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 9I of Act 58 of 1962, as inserted by section 27 of Act 24 of 2011 and amended by section 18 of Act 22 of 2012**

**27.** (1) Section 9I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)*(a)* for the words preceding the proviso of the following words:

“for the duration of that year of assessment, each [**shareholder**] holder of shares in the company (whether alone or together with any other company forming part of the same group of companies as that [**shareholder**] holder) held 10 per cent or more of the equity shares and voting rights in that company”.

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(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008, section 16 of Act 60 of 2008, section 13 of Act 17 of 2009, section 18 of Act 7 of 2010, section 28 of Act 24 of 2011 and section 19 of Act 22 of 2012**

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

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

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

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

“(i) not permitted to distribute any of its profits or gains to any person, other than, in the case of such company, to [**its shareholders**] the holders of shares in that company.”;

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

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“(i) pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or a beneficiary fund defined in section 1 of the Pension Funds Act[, **1956 (Act No. 24 of 1956)**];”;

(d) by the insertion in subsection (1) of paragraph (dA) after paragraph (d) of the following paragraph:

“(dA) the receipts and accruals of any portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property;”;

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

“(bb) a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from **[its shareholders]** the holders of shares in that share block company; or”;

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

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

(g) by the substitution in subsection (1) for paragraph (gE) 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)**];”;

(h) by the deletion in subsection (1)(gG)(i) of the comma and the words following item (bb);

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

“(gI) any amount received or accrued in respect of a policy of insurance relating to the death, disablement, severe illness or unemployment of a person who is the policyholder in respect of that policy of insurance;”;

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

“(h) any amount of interest **[as defined in section 37I]** which is received or accrued by or to any person that is not a resident, unless **[that person]**—

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

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- (ii) **[at any time during the twelve-month period preceding the date on which the interest is received or accrued by or to that person carried on business through] the debt from which the interest arises is effectively connected to a permanent establishment of that person in the Republic if a taxpayer reference number as defined in the Tax Administration Act has been allocated to that person;**”;

(k) by the insertion in subsection (1) after paragraph (hA) of the following paragraphs:

“(hB) the amount of any royalty as defined in section 50A which is received or accrues by or to any person that is not a resident, unless—

- (i) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the amount is received or accrued by or to that person;
- (ii) at any time during the twelve-month period preceding the date on which the amount is received or accrued by or to that person the property in respect of which that royalty is paid is effectively connected to a permanent establishment of that person in the Republic if a taxpayer reference number as defined in the Tax Administration Act has been allocated to that person; or
- (iii) that royalty is paid by a headquarter company in respect of the granting of the use, right of use or permission to use intellectual property as defined in section 23I to which section 31 does not apply as a result of the exclusion contained in section 31(5)(c) or (d);

(hC) the amount of any service fee as defined in section 51A which is received or accrues by or to any person that is not a resident, to the extent that person is subject to the withholding tax on service fees under Part IVC of this Chapter;”.

(l) by the substitution in subsection (1) for paragraph (iB) 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) and that amount is subject to normal tax at the time that the amount is deemed to accrue to that portfolio of a collective investment scheme in securities;”;

(m) by the substitution in subsection (1)(k)(i) for the words preceding the proviso of the following words:

“dividends contemplated in paragraph (k) of the definition of ‘gross income’ (other than dividends paid or declared by a headquarter company) received by or accrued to any person”;

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(n) by the substitution in subsection (1)(k)(i) for paragraph (aa) of the proviso of the following paragraph:

“(aa) to dividends (other than those received by or accrued to or in favour of a person that is not a resident or a dividend contemplated in paragraph (b) of the definition of ‘dividend’) distributed by a REIT, or by a controlled **[property]** company as defined in section 25BB;”;

(o) by the deletion in subsection (1)(k)(i) of paragraph (dd) of the proviso;

(p) by the substitution in subsection (1)(k)(i) in paragraph (ee) of the proviso for the words following subparagraph (B) of the following words:

“unless that cession or exercise **[is part of the disposal]** results in the holding by that company of all the rights attaching to a share;”;

(q) by the addition in subsection (1)(k)(i) to the proviso after paragraph (gg) of the following paragraph:

“(hh) to any dividends received by or accrued to a company other than dividends taken into account for purposes of paragraph (gg) to the extent that the aggregate of those dividends does not exceed an amount equal to the aggregate of any deductible expenditure incurred by that company, if the amount of that expenditure is determined wholly or partly with reference to any dividends received by or accrued to that company: Provided that the aggregate of those dividends is reduced by so much of any amounts incurred that are taken into account for the purposes of paragraph (gg);”;

(r) by the deletion in subsection (1) of paragraph (l);

(s) by the deletion in subsection (1) of paragraph (m);

(t) by the substitution in subsection (1)(o) for subparagraph (i) of the following subparagraph:

“(i) as defined in paragraph 1 of the Fourth Schedule, derived by any person as an officer or crew member of a South African ship, as defined in section 12Q(1), engaged—

(aa) in **[the international transportation for reward of passengers or goods]** international shipping, as defined in section 12Q(1); [or]

(bb) in the prospecting, exploration or mining (including surveys and other work of a similar nature) for, or production of, any minerals (including natural oils) from the seabed outside the Republic, where such officer or crew member is employed on board such ship solely for purposes of the ‘passage’ of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981), and if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment; or

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(cc) in fishing outside the Republic on a South African ship as defined in section 12Q(1), and if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment[, if such person was outside the Republic for a period or periods exceeding 183 full days in aggregate during the year of assessment];”;

(u) by the substitution in subsection (1)(q) for subparagraphs (aa) and (bb) of paragraph (ii) of the proviso of the following subparagraphs:

“(aa) if the remuneration factor derived by the employee **[during the]** in relation to a year of assessment exceeded [R100 000] R200 000; and

(bb) to so much of any scholarship or bursary contemplated in this subparagraph as in the case of any such relative, during the year of assessment, exceeds—

(A) R10 000 [during the year of assessment] in respect of a qualification to which an NQF level from 1 up to and including 4 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and

(B) R30 000 in respect of a qualification to which an NQF level from 5 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;

(v) by the substitution in subsection (1)(t) for subparagraph (v) of the following subparagraph:

“(v) of the Armaments **[Development and Production]** Corporation of South Africa Limited, **[established under]** contemplated in section 2(1) of the [Armaments Development and Production Act, 1968 (Act No. 57 of 1968)] Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003);”.

(2) Paragraphs (a) and (v) of subsection (1) are deemed to have come into operation on 1 January 2013.

(3) Paragraphs (b), (c), (e) and (g) come into operation on 1 January 2014.

(4) Paragraph (d) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

(5) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 April 2013.

(6) Paragraph (h) of subsection (1) comes into operation on 1 March 2014 and applies in respect of premiums paid or amounts received or accrued on or after that date.

(7) Paragraph (i) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.



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(8) Paragraphs *(j)*, *(k)* and *(r)* come into operation on 1 January 2015 and apply in respect of amounts received or accrued on or after that date.

(9) Paragraph *(l)* of subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of amounts received or accrued on or after that date but before 1 January 2014.

(10) Paragraphs *(m)* and *(o)* of subsection (1) come into operation on 1 March 2014 and apply in respect of amounts received or accrued on or after that date.

(11) Paragraph *(n)* of subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of dividends received or accrued on or after that date.

(12) Paragraph *(p)* of subsection (1) is deemed to have come into operation on 25 October 2012 and applies in respect of dividends received or accrued on or after that date.

(13) Paragraph *(q)* of subsection (1) comes into operation on 1 January 2015 and applies in respect of amounts received or accrued during any year of assessment commencing on or after that date.

(14) Paragraph *(s)* of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

(15) Paragraph *(t)* of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

(16) Paragraph *(u)* of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995, section 11 of Act 28 of 1997, section 19 of Act 53 of 1999, section 14 of Act 59 of 2000, section 11 of Act 5 of 2001, section 15 of Act 32 of 2004, section 17 of Act 31 of 2005, section 17 of Act 60 of 2008 and section 271 read with paragraph 32 of Schedule 1 of Act 28 of 2011**

**29.** (1) Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “statutory actuary” of the following definition:

“ ‘**statutory actuary**’[,]**]** means an actuary appointed in accordance with section 20(1) or 21(1)(b) of the [**Long-Term**] Long-term Insurance Act[, **1998 (Act No. 52 of 1998)**];”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012**

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

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(a) by the deletion in subsection (2) after paragraph (c) of the word “or”;

(b) by the addition to subsection (2) after paragraph (d) of the expression “; or”;

(c) by the addition to subsection (2) after paragraph (d) of the following paragraph:

“(e) to the extent that the foreign dividend is received by or accrues to a company that is a resident in respect of a listed share and consists of the distribution of an asset *in specie*.”;

(d) by the addition to subsection (2) after the proviso of the following further proviso:

“: Provided further that paragraphs (a) and (b) must not apply to any foreign dividend received by or accrued to a person if the foreign dividend is received or accrues in respect of a share other than an equity share”.

(2) Paragraphs (a), (b) and (c) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of dividends received or accrued on or after that date.

(3) Paragraph (d) of subsection (1) comes into operation on 1 January 2014 and applies in respect of foreign dividends received or accrued on or after that date.

## **Amendment of section 10C of Act 58 of 1962, as inserted by section 21 of Act 22 of 2012**

**31.** (1) Section 10C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“There shall be exempt from normal tax in respect of the aggregate of compulsory annuities payable to a person an amount equal to so much of the person’s own contributions to any pension fund, provident fund and retirement annuity fund that did not rank for a deduction against the person’s income in terms of section 11(k) [or (n)] as has not previously been—”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made during years of assessment commencing on or after that date.

**Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 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,**

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**section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, section 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, section 30 of Act 24 of 2011, item 33 of Schedule 1 to Act 28 of 2011 and section 22 of Act 22 of 2012**

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

- (a) by the substitution in paragraph (e) for the words preceding the proviso of the following words:  
“save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C, 12DA, 12E(1) or 37B) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991),**] and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment—”;
- (b) by the substitution in paragraph (e) for paragraph (iA) of the proviso of the following paragraph:  
“(iA) no allowance may be made in respect of any machinery, plant, implement, utensil or article the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of an ‘instalment credit agreement’ as defined in section 1 of the Value-Added Tax Act[, **1991**];”;
- (c) by the substitution in paragraph (f) for subparagraph (iii) of the following subparagraph:  
“(iii) the right of use of any patent as defined in the Patents Act[, **1978 (Act No. 57 of 1978),**] or any design as defined in the Designs Act[, **1993 (Act No. 195 of 1993),**] or any trade mark as defined in the Trade Marks Act[, **1993 (Act No. 194 of 1993),**] or any copyright as defined in the Copyright Act[, **1978 (Act No. 98 of 1978),**] or of any other property which is of a similar nature, if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or”;
- (d) by the substitution in paragraph (gA) for subparagraphs (i) and (ii) of the following subparagraphs:  
“(i) in devising or developing any invention as defined in the Patents Act[, **1978 (Act No. 57 of 1978),**] or in creating or producing any design as defined in the Designs Act[, **1993 (Act No. 195 of 1993),**] or any trade mark as defined in the Trade Marks Act[, **1993 (Act**

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**No. 194 of 1993),]** or any copyright as defined in the Copyright Act[, **1978 (Act No. 98 of 1978),]** or any other property which is of a similar nature; **[or]**

- (ii) in obtaining any patent or the restoration of any patent under the Patents Act[, **1978,]** or the registration of any design under the Designs Act[, **1993,]** or the registration of any trade mark under the Trade Marks Act[, **1993,]** or under similar laws of any other country; or”;

(e) by the substitution in paragraph (gA) in paragraph (cc) of the proviso for subparagraphs (A) and (B) of the following subparagraphs:

“(A) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than 50 per cent of any class of shares issued by such company, whether directly as a **[shareholder]** holder of shares in that company or indirectly as a **[shareholder]** holder of shares in any other company; or

(B) both the taxpayer and such other person are companies and any third person is interested in more than 50 per cent of any class of shares issued by one of those companies and in more than 50 per cent of any class of shares issued by the other company, whether directly as **[shareholder]** a holder of shares in the company by which the shares in question were issued or indirectly as a **[shareholder]** holder of shares in any other company;”;

(f) by the substitution for paragraph (gB) of the following paragraph:

“(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the grant of any patent or the restoration of any patent, or the extension of the term of any patent under the Patents Act[, **1978 (Act No. 57 of 1978),]** or the registration of any design, or extension of the registration period of any design under the Designs Act[, **1993 (Act No. 195 of 1993),]** or the registration of any trade mark, or the renewal of the registration of any trade mark under the Trade Marks Act[, **1993 (Act No. 194 of 1993),]** or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his or her income;”;

(g) by the substitution in paragraph (gC) for subparagraphs (i), (ii), (iii) and (iv) of the following subparagraphs:

- “(i) invention or patent as defined in the Patents Act[, **1978 (Act No. 57 of 1978)];**
- (ii) design as defined in the Designs Act[, **1993 (Act No. 195 of 1993)];**
- (iii) copyright as defined in the Copyright Act[, **1978 (Act No. 98 of 1978)];**

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(iv) other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993)]; or”;

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

“(gD) where that trade constitutes the provision of telecommunication services, the exploration, production or distribution of petroleum or the provision of gambling facilities, any expenditure (other than in respect of infrastructure) incurred to acquire a licence from the government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a), or an institution or entity contemplated in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act[, 1999 (Act No. 1 of 1999)], where that expenditure is incurred in terms of the licence and the licence is required to carry on that trade, which deduction must not exceed for any one year such portion of the expenditure as is equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right to the licence after the date on which the expenditure was incurred, or 30, whichever is the lesser;”;

(i) by the substitution in paragraph (h) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than [fifty] 50 per cent of any class of shares issued by such company, whether directly as a [shareholder] holder of shares in that company or indirectly as a [shareholder] holder of shares in any other company; or

(ii) both the taxpayer and such other person are companies and any third person is interested in more than [fifty] 50 per cent of any class of shares issued by one of those companies and in more than [fifty] 50 per cent of any class of shares issued by the other company, whether directly as a [shareholder] holder of shares in the company by which the shares in question were issued or indirectly as a [shareholder] holder of shares in any other company;”;

(j) by the substitution in paragraph (k)(ii) for item (dd) of the following item:

“(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 [5(1) or 6(1)(b) or (3)] 5(1)(a) or 6(1)(b)(i) of the Second Schedule;”;

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

“(k) any amount contributed during a year of assessment to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund by a member of that fund:  
Provided that—

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- (i) the total deduction to be allowed in terms of this paragraph must not in the year of assessment exceed the lesser of—
- (aa) R350 000; or
  - (bb) 27,5 per cent of the higher of the person’s—
    - (A) remuneration (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as defined in paragraph 1 of the Fourth Schedule; or
    - (B) taxable income (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under this paragraph;
- (ii) for the purposes of this paragraph, any amount so contributed which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of any year of assessment is deemed to be an amount so contributed in the current year of assessment, except to the extent that the amount so contributed has been—
- (aa) allowed as a deduction against income in any year of assessment;
  - (bb) accounted for under paragraph 5(1)(a) or 6(1)(b)(i) of the Second Schedule; or
  - (cc) exempted under section 10C;
- (iii) for the purposes of this paragraph, any amount so contributed by an employer of the person for the benefit of the person must, to the extent that the amount has been included in the income of the person as a taxable benefit in terms of the Seventh Schedule, be deemed to have been contributed by the person; and
- (iv) for the purposes of this paragraph, a partner in a partnership must be deemed to be an employee of the partnership and a partnership is deemed to be the employer of the partners in that partnership;”;
- (l)* by the substitution for paragraph *(l)* of the following paragraph:
- “(l) any amount contributed by an employer during the year of assessment for the benefit of the employer’s current or retired employees to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund: Provided that for the purposes of this paragraph a partner in a partnership must be deemed to be an employee of the partnership and a partnership is deemed to be the employer of the partners in that partnership;”;
- (m)* by the deletion of paragraph *(n)*.

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(n) by the insertion before paragraph (w) of the following paragraph:

“(t) an amount equal to any dividends declared by a company, to the extent that those dividends are included in that year of assessment in the income of another person in terms of paragraph (c) or (d) of the definition of ‘gross income’;”;

(2) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) of subsection (1) come into operation on 1 January 2014.

(3) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.

(4) Paragraphs (k), (l) and (m) of subsection (1) come into operation on 1 March 2015 and apply in respect of amounts contributed on or after that date.

(5) Paragraph (n) of subsection (1) comes into operation on 1 March 2014 and applies in respect of dividends paid on or after that date.

## **Repeal of section 11B of Act 58 of 1962**

33. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 11B.

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

**Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by section 13 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008, section 16 of Act 17 of 2009, section 32 of Act 24 of 2011, section 1 of Act 25 of 2011 and section 271 read with item 34 of Schedule 1 of Act 28 of 2011**

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

(a) by the substitution for subsections (1) to (10) of the following subsections:

“(1) For the purposes of this section ‘**research and development**’ means—

(a) systematic investigative or systematic experimental activities of which the result is uncertain carried on for the purpose of—

[(i) **discovering non-obvious scientific or technological knowledge; or**

(ii)](i) creating or developing—

(aa) an invention as defined in section 2 of the Patents Act, [1978 (Act No. 57 of 1978),] in respect of which a patent may be granted under section 25 of that Act;

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- (bb) a functional design as defined in section 1 of the Designs Act [, 1993 (Act No. 195 of 1993), that qualifies] of a scientific or technological nature, capable of qualifying for registration under section 14 of that Act; or
- (cc) a computer program as defined in section 1 of the Copyright Act [, 1978 (Act No. 98 of 1978)], that is innovative and mainly intended for the purposes of the sale to, or for use by the general public;
- [(dd) knowledge essential to the use of such invention, design or computer program; or]**
- (ii) discovering applied scientific knowledge that is innovative in nature and mainly intended for the purposes of the sale to and for use by the general public; or
- (iii) making a discovery that leads to the advancement of purely theoretical scientific knowledge.
- (b) **[developing or significantly improving]** making a significant and innovative improvement to any invention, design, computer program or knowledge contemplated in paragraph (a) [if that development or improvement relates to any] for the purposes of—
- (i) **[new or]** improved function;
- (ii) improvement of performance;
- (iii) improvement of reliability; or
- (iv) improvement of quality,
- of that invention, design, computer program or knowledge for the purposes of the sale to, or for use by the general public of that invention, design, computer program or knowledge:

Provided that for the purposes of this definition, research and development does not include activities for the purpose of—

- (a) market research, market testing or sales promotion;
- (b) social science research, including the arts and humanities;
- (c) oil and gas or mineral exploration or prospecting except research and development carried on to develop technology used for that exploration or prospecting;
- (d) the creation or development of financial instruments or financial products;
- (e) the creation or enhancement of trademarks or goodwill;
- (f) an invention, design, computer program or knowledge if that invention, design, computer program or knowledge is already utilised or known by other persons within a market inside or outside the Republic, unless that knowledge is applied in respect of research and



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development in respect of such types of generic medicine as are designated as qualifying as research and development by the Minister of Science and Technology by notice in the Gazette.

(2)(a) **[For]** Subject to paragraphs (b) and (c), there shall be allowed as a deduction from the income of a taxpayer for the purposes of determining the taxable income of [a] that taxpayer in respect of any year of assessment **[there shall be allowed as a deduction from the income of that taxpayer]** an amount equal to so much of any expenditure actually incurred by that taxpayer directly and solely in respect of research and development undertaken in the Republic if that expenditure is incurred—

**[(a)](i)** in the production of income; and

**[(b)](ii)** in the carrying on of any trade.

(b) No deduction shall be allowed under this subsection in respect of expenditure incurred in respect of—

(i) immovable property, machinery, plant, implements, utensils and articles;

(ii) activities undertaken solely to satisfy regulatory or other legal requirements, including expenditure contemplated in section 11(gB); and

(iii) financing, administration and similar costs.

(c) Research and development, other than categories of pharmaceutical research designated by the Minister for Science and Technology by notice in the Gazette, shall be deemed not to have been undertaken in the Republic if, for the duration that the research and development is conducted, no natural person located within the Republic possesses any significant authority to determine or alter the methodology of the research and development, the objective or aim of the research and development and the manner in which that research and development is conducted in respect of which the deduction under this section is claimed.

(3) **[In addition to the deduction allowable in terms of subsection (2), a]** A taxpayer that is a company may deduct an additional amount equal to 50 per cent of the expenditure contemplated in subsection (2) if that taxpayer may deduct an amount as contemplated in subsection (2) and—

(a) that research and development is approved by the Minister of Science and Technology in terms of subsection (9);

(b) that expenditure is incurred in respect of research and development carried on by that taxpayer; and

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(c) that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).

(4) In addition to the deduction allowable in terms of subsection (2), where any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on research and development on behalf of that taxpayer, the taxpayer may deduct an amount equal to 50 per cent of the expenditure contemplated in subsection (2) if that taxpayer may deduct an amount as contemplated in subsection (2) and—

- (a) if that research and development is approved by the Minister of Science and Technology in terms of subsection (9);
- (b) if that expenditure is incurred in respect of research and development carried on by that taxpayer;
- (c) to the extent that the other person carrying on the research and development is—
  - (i) (aa) an institution, board or body that is exempt from normal tax under section 10(1)(cA); or
  - (bb) the Council for Scientific and Industrial Research; or
  - (ii) a company forming part of the same group of companies, as defined in section 41, if the company that carries on the research and development does not claim a deduction under subsection (3); and
- (d) if that expenditure is incurred on or after the date of receipt of the application by the Department of Science and Technology for approval of that research and development in terms of subsection (9).

(5) Where a company funds expenditure incurred by another company as contemplated in subsection (4)(c)(ii), any deduction under that subsection by the company that funds the expenditure must be limited to an amount of 50 per cent of the actual expenditure incurred directly and solely in respect of that research and development carried on by the other company that is being funded.

**[(6) For the purposes of subsections (3) and (4), a person carries on research and development if that person may determine or alter the methodology of the research.]**

(7) Where any **[government grant]** amount is received by or accrues to a taxpayer from—

- (a) a department of the Government of the Republic in the national, provincial or local sphere;
- (b) a public entity that is listed in Schedule 2 or 3 to the Public Finance Management Act; or

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(c) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

to fund expenditure in respect of any research and development, an amount equal to the amount that is funded must not be taken into account for purposes of the deduction under subsection (3) or (4).

**[(8) No deduction shall be allowed under this section for expenditure incurred in respect of—**

- (a) market research, market testing or sales promotion;**
- (b) administration, financing, compliance or similar expenditure;**
- (c) routine testing, analysis, collection of information or quality control in the normal course of business;**
- (d) development of internal business processes unless those internal business processes are mainly intended for sale or for granting the use or right of use or the grant of permission to use thereof;**
- (e) social science research, including the arts and humanities;**
- (f) oil and gas or mineral exploration or prospecting, except research and development carried on to develop technology used for that exploration or prospecting;**
- (g) the creation or development of financial instruments or financial products;**
- (h) the creation or enhancement of trademarks or goodwill; and**
- (i) any expenditure contemplated in section 11(gB) or (gC).]**

(9) The Minister of Science and Technology must approve any research and development being carried on or funded for the purposes of subsections (3) and (4) having regard to—

- (a) [the innovative nature of the research and development] whether in addition to the criteria contemplated in the definition of ‘research and development’ in subsection (1), that envisaged research and development will constitute fundamentally and substantially novel, innovative and unique results that adds substantial value to the industry or market sector for which the research and development is intended;**
- [(b) the extent to which carrying on that research and development requires specialised skills; and]**
- (c) such other criteria as the Minister of Science and Technology in consultation with the Minister of Finance may prescribe by regulation in respect of whether the research and development constitutes a design, patent, computer program or non-obvious knowledge within the market or industry for which the research and development is intended.**

(10) If research and development is approved under subsection (9) and—

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- (a) any material fact changes which would have had the effect that approval under subsection (9) would not have been granted had that fact been known to the Minister of Science and Technology at the time of granting approval; **[or]**
- (b) the taxpayer carrying on that research and development fails to submit a report to the committee as required by subsection (13); or
- (c) the taxpayer carrying on that research and development is guilty of fraud, or misrepresentation or non-disclosure of material facts which would have had the effect that approval under subsection (9) would not have been granted,

the Minister of Science and Technology may, after taking into account the recommendations of the committee, withdraw the approval granted in respect of that research and development with effect from a date specified by that Minister.

(b) by the substitution for subsections (13) and (14) of the following subsections:

“(13) A taxpayer carrying on research and development approved under subsection (9) must report to the committee annually with respect to—

(a) the progress of that research and development;

(b) the extent to which carrying on that research and development requires specialised skills,

within 12 months after the close of each year of assessment, starting with the year following the year in which approval is granted under subsection (9) in the form and in the manner that the Minister of Science and Technology may prescribe.

(14)(a) Notwithstanding Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Science and Technology information in relation to research and development—

(a) as may be required by that Minister for the purposes of submitting a report to Parliament in terms of subsection (17);

(b) if that information is material in respect of the granting of approval under subsection (9) or a withdrawal of that approval in terms of subsection (10).”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2012 and applies in respect of expenditure incurred in respect of research and development on or after that date.

## **Amendment of section 11E of Act 58 of 1962, as inserted by section 20 of Act 35 of 2007 and amended by section 17 of Act 17 of 2009 and section 21 of Act 7 of 2010**

**35.** (1) Section 11E of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of the following paragraph:

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

(2) Subsection (1) is deemed to have come into operation on 1 May 2011.

**Amendment of section 12B of Act 58 of 1962, as substituted by section 19 of Act 31 of 2005 and amended by section 21 of Act 35 of 2007, section 18 of Act 17 of 2009 and section 23 of Act 22 of 2013**

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

(a) by the substitution in subsection (1) for paragraphs (f), (g) and (h) of the following paragraphs:

- “(f) machinery, implement, utensil or article (other than livestock) which is owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and brought into use for the first time by that taxpayer and used by him or her in the carrying on of his or her farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment; or
- (g) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by the taxpayer for the purpose of his or her trade to be used for the production of bio-diesel or bio-ethanol;
- (h) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by that taxpayer for the purpose of his or her trade to be used by that taxpayer in the generation of electricity from—
- (i) wind power;
  - (ii) solar energy;
  - (iii) hydropower to produce electricity of not more than 30 megawatts; and
  - (iv) biomass comprising organic wastes, landfill gas or plant material;”;

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

“(g) any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of **[an] the definition of** ‘instalment credit agreement’ **[as defined]** in section 1 of the Value-Added Tax Act[, 1991].”.

(2) Subsection (1) comes into operation on 1 January 2014.

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

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

(a) by the substitution in subsection (1) for paragraphs (a), (b), (c) (d), (e), (f), (g) and (gA) of the following paragraphs:

“(a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of** ‘instalment credit agreement’ **[as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; **[or]**

(b) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of** ‘instalment credit agreement’ **[as defined]** in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991),] and which was or is let by the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee’s trade (other than mining or farming) and is used by the lessee directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; **[or]**

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- (c) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (a)) owned by the taxpayer or acquired by the taxpayer as a purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991),]** and which was or is brought into use for the first time by any agricultural co-operative registered or deemed to be incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), or registered under the Co-operatives Act, 2005 (Act No. 14 of 2005) and is used by it directly for storing or packing pastoral, agricultural or other farm products of its members (including any person who is a member of another agricultural co-operative which is itself a member of such agricultural co-operative) or for subjecting such products to a primary process as defined in section 27(9); **[or]**
- (d) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (e)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991),]** and which was or is brought into use for the first time by the taxpayer for the purposes of his trade as hotelkeeper and is used by him in a hotel, except any vehicle or equipment for offices or managers’ or servants’ rooms; **[or]**
- (e) machinery, implement, utensil or article (other than any machinery, implement, utensil or article in respect of which an allowance has been granted to the taxpayer under paragraph (d)) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991),]** and which was or is let by the taxpayer and was or is brought into use for the first time by the lessee for the purposes of the lessee’s trade as hotelkeeper and used by him in a hotel, except any vehicle or equipment for offices or managers’ or servants’ rooms; **[or]**
- (f) aircraft owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991),]** and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade **[(other than an aircraft in respect of which an allowance has been granted to the taxpayer under section 12B or 14bis)]; [or]**

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(g) ship owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of **[an] the definition of ‘instalment credit agreement’ [as defined]** in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991),]** and which was or is brought into use for the first time by the taxpayer for the purposes of his or her trade (other than a South African ship **[in respect of which an allowance has been granted to the taxpayer in terms of section 14(1)(a) or (b)] contemplated in section 12Q(1)**);

(gA) new or unused machinery or plant, which is owned by a taxpayer, or acquired by a 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 is first brought into use by that taxpayer for purposes of research and development as defined in section 11D; or”;

(b) by the deletion in subsection (1) of paragraph (a) of the proviso;

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

**“(b) any asset contained in, or forming part of[,]** any South African ship**[, if the cost of such asset has been included in the adjustable cost of such ship]** as defined in section **[14(2)] 12Q(1);”**; and

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

**“(e) any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of [an] the definition of ‘instalment credit agreement’ [as defined] in section 1 of the Value-Added Tax Act[, 1991].”**

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

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

**38.** (1) Section 12D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “affected asset” for the words following paragraph (d) of the following words:

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



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(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of any pipeline, transmission line or cable or railway line first brought into use on or after that date.

## **Amendment of section 12DA of Act 58 of 1962, as inserted by section 24 of Act 35 of 2007 and amended by section 22 of Act 60 of 2008**

**39.** (1) Section 12DA of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

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

(2) Subsection (1) comes into operation on 1 January 2014.

## **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 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009, section 23 of Act 7 of 2010, section 34 of Act 24 of 2011 and section 25 of Act 22 of 2012**

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

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

“Where any plant or machinery (hereinafter referred to as an asset) owned by a taxpayer which qualifies as a small business corporation or acquired by such a taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of [**an**] the definition of ‘instalment credit agreement’ [**as defined**] in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991),**]—”;

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

“ ‘**small business corporation**’ means any close corporation or co-operative or any private company as defined in section 1 of the Companies Act[, **2008 (Act No. 71 of 2008), all the**

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**shareholders of which are]** if at all times during the year of assessment all the holders of shares in that company, co-operative or close corporation are natural persons, where—”;

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

“(ii) that company, or co-operative or close corporation does not throughout the year of assessment employ three or more full-time employees (other than any employee who is a **[shareholder of]** holder of a share in the company or a member of the co-operative or close corporation, as the case may be, or who is a connected person in relation to a **[shareholder]** holder of a share in the company or a member), who are on a full-time basis engaged in the business of that company, co-operative or close corporation of rendering that service.”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008, amended by section 25 of Act 17 of 2009 and section 38 of Act 24 of 2011**

**41.** (1) Section 12J of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “impermissible trade” of the following paragraph:

“(b) any trade carried on by a bank as defined in the Banks Act, **[1990 (Act No. 94 of 1990),]** a long-term insurer as defined in the **[Long-Term] Long-term** Insurance Act, **[1998 (Act No. 52 of 1998),]** a short-term insurer as defined in the **[Short-Term] Short-term** Insurance Act**[, 1998 (Act No. 53 of 1998),]** and any trade carried on in respect of money-lending or hire-purchase financing;”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of section 12K of Act 58 of 1962, as inserted by section 26 of Act 17 of 2009**

**42.** (1) Section 12K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “qualifying CDM project” for paragraph (b) of the following paragraph:

“(b) that has been registered as contemplated in paragraph 36 of the Modalities on or before 31 December **[2012] 2020;**”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

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## **Amendment of section 12L of Act 58 of 1962, as inserted by section 27 of Act 17 of 2009 and amended by section 27 of Act 7 of 2010 and section 29 of Act 22 of 2012**

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

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

“(2) The amount of the deduction contemplated in subsection [(3)] (1) must be calculated at 45 cents per kilowatt hours or kilowatt hours equivalent of energy efficiency savings.”; and

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

“(3) A person claiming the deduction allowed in terms of subsection [(2)] (1) during any year of assessment must obtain a certificate issued by an institution, board or body prescribed by the regulations contemplated in subsection (5) in respect of the energy efficiency savings for which a deduction is claimed in respect of that year of assessment containing—”.

(2) Subsection (1) comes into operation on the date on which section 29 of Act 22 of 2012 comes into operation.

## **Amendment of section 12M of Act 58 of 1962, as inserted by section 28 of Act 17 of 2009 and amended by section 28 of Act 7 of 2010 and section 30 of Act 22 of 2012**

**44.** (1) Section 12M of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “dependant” of the following definition:

“**‘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)]);”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of section 12N of Act 58 of 1962, as inserted by section 29 of Act 7 of 2010 and amended by section 31 of Act 22 of 2012**

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

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

“(b) effects an improvement on the land or to the building—

(i) [incurs] in pursuance of an obligation to effect an improvement on the land or to the building in terms of—

[(i)](aa) a Public Private Partnership;

[(ii)](bb) an agreement in terms of which the right of use or occupation is granted, if the land or building is owned by—

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[(aa)](A) the government of the Republic in the national, provincial or local sphere; or

[(bb)](B) any entity of which the receipts and accruals are exempt from tax in terms of section 10(1)(cA) or (t); or

[(iii)](cc) the Independent Power Producer Procurement Programme administered by the Department of Energy; or

(ii) at the option of the taxpayer and the improvement is affixed to the land or building;”;

(b) by the addition to subsection (1) at the end of paragraph (c) of the word “and”; and

(c) by the deletion in subsection (1) of paragraph (d).

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of expenditure incurred on or after that date.

## Insertion of section 12Q in Act 58 of 1962

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

### **“Exemption of income in respect of ships used in international shipping**

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

**‘international shipping’** means the conveyance for compensation of passengers or goods by means of the operation of a South African ship engaged in international traffic;

**‘international shipping company’** means a company that is a resident that holds a share or shares in one or more South African ships that are utilised in international shipping;

**‘international shipping income’** means the receipts and accruals of a person derived from international shipping;

**‘South African ship’** means a ship which is registered in the Republic in accordance with section 15 of the Ship Registration Act, 1998 (Act No. 58 of 1998).

(2) (a) There must be exempt from normal tax any international shipping income of any international shipping company.

(b) Any capital gain or capital loss in respect of any year of assessment of any international shipping company determined in respect of a South African ship engaged in international

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shipping must be disregarded in determining the aggregate capital gain or aggregate capital loss of that international shipping company.

(3) The rate of dividends tax contemplated in section 64E that is paid by an international shipping company on the amount of any dividend derived from international shipping income must not exceed 0 per cent of the amount of that dividend.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 12Q of Act 58 of 1962, as inserted by section xx of Taxation Laws Amendment Act 2013**

47. (1) Section 12Q of the Income Tax Act, 1962, is hereby amended by the addition after subsection (3) of the following subsection:

“(4) There must be exempt from the withholding tax on interest any amount of interest if that amount is paid to any foreign person, as defined in section 49A, by an international shipping company in respect of debt utilised to fund the construction or improvement of a South African ship utilised for international shipping.”.

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of interest received or accrued on or after that date.

## **Insertion of section 12R in Act 58 of 1962**

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

### **“Special Economic Zones**

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

**‘qualifying company’** means a company—

- (a) (i) incorporated by or under any law in force in the Republic or in any part thereof; or
- (ii) that has its place of effective management in the Republic;
- (b) (i) that carries on business in a category of a Special Economic Zone designated by the Minister of Trade and Industry in terms of section 23(3) of the Special Economic Zones Act and approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of subsection (2); or

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(ii) that carries on a type of business or provision of services that may be located in a special economic zone prescribed by the Minister of Trade and Industry in terms of section 23(5) of the Special Economic Zones Act, 2013 approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of this section in terms of subsection (2);

(c) the business or services contemplated in paragraph (b) are carried on or provided from a fixed place of business situated within a special economic zone; and

(d) not less than 90 per cent of the income of that company is derived from the carrying on of business or provision of services within that special economic zone;

‘special economic zone’ means a special economic zone as defined in section (1) of the Special Economic Zones Act, 2013, that is approved for the purposes of this section by the Minister of Finance under subsection (3);

‘Special Economic Zones Act’ means the Special Economic Zones Act, 2013.

(2) The rate of tax on taxable income attributable to income derived by a qualifying company within a special economic zone must not exceed 15 cents on each rand of taxable income derived in respect of business activities within that special economic zone.

(3) The Minister of Finance must approve a special economic zone for purposes of this section after taking into account the financial implications for Government should a special economic zone be approved under this section.

(4) Notwithstanding a qualifying company being located in a special economic zone—

(a) subsection (2) and section 12S do not apply to any qualifying company in respect of the following activities classified under “Major Division 3: Manufacturing” in the most recent Standard Industrial Classification Code (referred to as the “SIC Code”) issued by Statistics South Africa:

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

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

(iii) tobacco products (SIC Code 3060);

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

(v) bio-fuels if that manufacture negatively impacts on food security in the Republic;

and

(b) subsection (2) does not apply to any qualifying company in respect of activities classified in the most recent SIC Code issued by Statistics South Africa, which the Minister of Finance may designate by notice in the *Gazette*:

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(5) This provision ceases to apply in respect of any year of assessment commencing on or after 1 January 2024.”

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Insertion of section 12S in Act 58 of 1962**

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

### **“Deduction in respect of buildings in special economic zones**

**12S.** (1) For the purposes of this section, **‘qualifying company’** means a qualifying company as defined in section 12R.

(2) A qualifying company may deduct from the income of that qualifying company an allowance equal to ten per cent of the cost to the qualifying company of any new and unused building owned by qualifying company, or any new and unused improvement to any building owned by the qualifying company, if that building or improvement is wholly or mainly used by the qualifying company during the year of assessment for purposes of producing income within a special economic zone in the course of the taxpayer’s trade, other than the provision of residential accommodation.

(3) If a qualifying company completes an improvement as contemplated in section 12N, the expenditure incurred by the qualifying company to complete the improvement must be deemed to be the cost to the qualifying company of any new and unused building or of any new and unused improvement to a building contemplated in subsection (2).

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

(5) Where any building or improvement in respect of which any deduction is claimed in terms of this subsection was during any previous financial year brought into use for the first time by the qualifying company for the purposes of any trade carried on by that company

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within a special economic zone, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such year or any subsequent year in which such asset was used by the qualifying company shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of that qualifying company.

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

(7) A deduction may not be allowed under any other section of this Act in respect of the cost of a building or improvement if any of that cost has qualified or will qualify for deduction from the qualifying company's income as a deduction of expenditure or an allowance in respect of expenditure under this section.

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

(9) The Commissioner may, notwithstanding the provisions of Chapter 6 of the Tax Administration Act disallow all deductions otherwise provided for under this section if a qualifying company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner.

(10) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where a deduction that has been allowed in any previous year must be disallowed in terms of subsection (9).

(11) This provision ceases to apply in respect of any year of assessment commencing on or after 1 January 2024.

(2) Subsection (1) comes into effect on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

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



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**section 13 of Act 19 of 2001, section 30 of Act 60 of 2001, section 3 of Act 4 of 2008, section 30 of Act 7 of 2010 and section 40 of Act 24 of 2011**

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

- (a) by the deletion in subsection (1) of paragraphs (a) and (c);
- (b) by the deletion in subsection (1) of paragraph (c) of the proviso.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 13bis of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965 and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993, section 12 of Act 21 of 1994, section 21 of Act 59 of 2000, section 4 of Act 4 of 2008 and section 31 of Act 7 of 2010**

**51.** (1) Section 13bis of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraphs (a) and (b).

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 13ter of Act 58 of 1962, as inserted by section 13 of Act 91 of 1982 and amended by section 14 of Act 94 of 1983, section 22 of Act 59 of 2000, section 28 of Act 60 of 2008 and section 32 of Act 7 of 2010**

**52.** (1) Section 13ter of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) Where any company is mainly engaged in the provision of housing facilities for the employees of [its] the sole or principal [shareholder] holder of shares in that company or for the employees of any other company the shares in which are held wholly by the sole or principal [shareholder] holder of shares in such first-mentioned company, the employees of such [shareholder] holder of shares or such other company, as the case may be, shall for the purposes of this section be deemed to be the employees also of such first-mentioned company.”.

(2) Subsection (1) comes into operation on 1 January 2014.

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

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## **29 of Act 17 of 2009, section 33 of Act 7 of 2010, section 41 of Act 24 of 2011 and section 34 of Act 22 of 2012**

**53.** (1) Section 13<sup>quat</sup> of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (2) after paragraph (c) of the word “and”;

(b) by the substitution in subsection (2) after paragraph (d) for the expression “; and” of a full stop.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

## **Repeal of section 14 of Act 58 of 1962**

**54.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 14.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Repeal of section 14<sup>bis</sup> of Act 58 of 1962**

**55.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 14<sup>bis</sup>.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Repeal of section 18 of Act 58 of 1962**

**56.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 18.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 18A of Act 58 of 1962, as amended by section 16 of Act 88 of 1971, section 13 of Act 90 of 1972, section 14 of Act 65 of 1973, section 16 of Act 69 of 1975, section 13 of Act 104 of 1980, section 16 of Act 96 of 1981, section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1998, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991, section 11 of Act 36 of 1996, section 24 of Act 30 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011 and section 7 of Act 21 of 2012**

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

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

“(B) in any other case, ten percent of the taxable income (excluding any retirement fund lump sum benefit **[and]**, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 18.”;

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

“(B) in any other case, ten percent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section **[or section 18]**.”;

(c) by the addition in subsection (1) to subitem (B) of the words following paragraph (c) of the following proviso:

“Provided that any amount being a portion of a donation made as contemplated in subsection (1) 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 shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment”;

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

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

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

“If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, other than immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be deemed to be an amount equal to—”;

(f) by the renumbering of the present subsection (3A) to subsection (3B); and

(g) by the addition after subsection (3) of the following subsection:

“(3A) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of immovable property of a capital nature where the lower of market

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value or municipal value exceeds cost, the amount of such deduction shall be determined in accordance with the formula:

$$A = B + (C \times D)$$

in which formula:

(a) “A” represents the amount deductible in respect of subsection (1);

(b) “B” represents the cost of the immovable property being donated;

(c) “C” represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for the amount equal to the lower of market value or municipal value on the day the donation is made; and

(d) “D” represents 66,7 per cent in the case of a natural person or special trust or 33,4 per cent in any other case.”;

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

“If the Commissioner has reasonable grounds for believing that any accounting officer or accounting authority contemplated in the Public Finance Management Act[, **1999 (Act No. 1 of 1999),**] or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, has issued or allowed a receipt to be issued in contravention of subsection (2A) or utilised a donation in respect of which a receipt was issued for any purpose other than the purpose contemplated in that subsection, the Commissioner—”;

(i) by the substitution in subsection (7) for paragraph (ii) of the following paragraph:

“(ii) the accounting officer or accounting authority contemplated in the Public Finance Management Act[, **1999 (Act 1 of 1999),**] or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2012.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 March 2014 and applies in respect of donations paid or transferred during years of assessment commencing on or after that date.

(5) Paragraphs (d), (h) and (i) of subsection (1) come into operation on 1 January 2014.

(6) Paragraphs (e), (f) and (g) of subsection (1) come into operation on 1 March 2014 and apply in respect of amounts paid or transferred during years of assessment commencing on or after that date.

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## Amendment of section 19 of Act 58 of 1962, as inserted by section 36 of Act 22 of 2012

58. (1) Section 19 of the Income Tax Act, 1962, is hereby amended—

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

“**Reduction [or cancellation] of debt**”;

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

“(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in **[the acquisition]** respect of trading stock that is held and not disposed of by that person at the time of the reduction of the debt.”;

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

“(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in **[the acquisition]** respect of trading stock that is held and not disposed of by that person at the time of the reduction of the debt; and”;

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

“the reduction amount in respect of that debt **[, less any amount of that reduction amount that has been applied to reduce an amount as contemplated in subsection (3),]** must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced less any amount of that reduction amount that has been applied to reduce an amount as contemplated in subsection (3).”;

(e) by the substitution in subsection (5)(b) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) in **[the acquisition]** respect of trading stock that is held and not disposed of by that person at the time of the reduction of the debt; or

(ii) in **[the acquisition, creation or improvement]** respect of an allowance asset.”;

(f) by the substitution in subsection (5)(b) for the words following subparagraph (ii) of the following words:

“the reduction amount in respect of that debt must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced.”;

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

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“(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in **[the acquisition, creation or improvement]** respect of an allowance asset,”; and

(h) by the substitution in subsection (6) for subparagraph (ii) of the following subparagraph:

“(ii) paragraph 12A of the Eighth Schedule has not been applied to reduce the amount of expenditure as contemplated in paragraph 20 of that Schedule in respect of that allowance asset **[to the full extent of that expenditure]**.”

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**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 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 101 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007, section 15 of Act 3 of 2008, section 35 of Act 60 of 2008, section 32 of Act 17 of 2009 and section 37 of Act 22 of 2012**

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

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

“derived by any person from **[the carrying on]** a source within the Republic **[of any trade]**, any—”;

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

“that is a retirement fund lump sum benefit, **[or]** retirement fund lump sum withdrawal benefit or severance benefit included in taxable income, any—”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 20C of Act 58 of 1962, as inserted by section 38 of Act 7 of 2010 and amended by section 38 of Act 22 of 2012**

**60.** (1) Section 20C of the Income Tax Act, 1962 is hereby amended by the substitution in subsection (1) for the definition of “royalty” of the following definition:

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“ **royalty**’ means any amount that is, before taking into account section [49D(b)] 50D(c), subject to the withholding tax on royalties in terms of [Part IVA] Part IVB.”.

(2) Subsection (1) comes into operation on 1 October 2014 and applies in respect of royalties that are paid or become due and payable on or after that date.

**Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008, section 39 of Act 7 of 2010 and section 45 of Act 24 of 2011**

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

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

“(1A) Where in respect of any year of assessment ending after the commencement date defined in section 1 of the Value-Added Tax Act[, 1991] any amount of sales tax referred to in section 23C(2) which was included in the cost price to the taxpayer of any trading stock is deemed by that section to have been recovered or recouped for the purposes of section 8(4)(a), the cost of such trading stock held and not disposed of by the taxpayer at the end of such year shall be deemed to have been reduced by the said amount.”;

(b) by the deletion of subsection (3B); and

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

“(iii) trading stock of any company has on or after 21 June 1993 been distributed *in specie* to any [shareholder of] holder of shares in that company;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2014.

**Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006, section 20 of Act 8 of 2007, section 37 of Act 60 of 2008, section 41 of Act 7 of 2010, section 47 of Act 24 of 2011, section 271 read with item 38 of Schedule 1 of Act 28 of 2011 and section 42 of Act 22 of 2012**

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

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

“(i) any contributions to a pension fund, provident fund or retirement annuity fund as may be deducted from the income of that person in terms of section 11(k) [**or (n)**];”;

(b) by the addition to paragraph (m) after subparagraph (iiA) of the word “and”;

(c) by the deletion in paragraph (m) of subparagraph (iii);

(d) by the substitution for the full stop after paragraph (q) of a semi-colon;

(e) by the addition after paragraph (q) of the following paragraph:

“(r) any deduction contemplated in section 11 in respect of any premium paid by a person in terms of an insurance policy, to the extent that the policy covers that person against death, disablement, severe illness or unemployment.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts contributed on or after that date.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) come into operation on 1 March 2014 and apply in respect of premiums paid on or after that date.

## **Amendment of section 23C of Act 58 of 1962, as amended by section 25 of Act 129 of 1991, section 21 of Act 141 of 1992 and section 33 of Act 60 of 2001**

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

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

“(a) the taxpayer is a vendor as defined in section 1 of the Value-Added Tax Act [, **1991 (Act No. 89 of 1991)**,]; and”;

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

“Where a taxpayer (being a vendor as defined in section 1 of the Value-Added Tax Act[, **1991**]) has in respect of any tax period applicable to him under that Act which has ended during his year of assessment, included in input tax deducted by him under section 16(3) of that Act an amount of sales tax, as permitted by section 78 of that Act so to be included—”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of section 23I of Act 58 of 1962, as substituted by section 38 of Act 60 of 2008 and amended by section 36 of Act 17 of 2009, section 44 of Act 7 of 2010 and section 47 of Act 22 of 2012**



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

(a) by the substitution in subsection (1) for paragraphs (a), (b), (c) and (d) of the definition of “intellectual property” of the following paragraphs:

- “(a) patent as defined in the Patents Act[, 1978 (Act No. 57 of 1978),] including any application for a patent in terms of that Act;
- (b) design as defined in the Designs Act[, 1993 (Act No. 195 of 1993)];
- (c) trade mark as defined in the Trade Marks Act[, 1993 (Act No. 194 of 1993)];
- (d) copyright as defined in the Copyright Act[, 1978 (Act No. 98 of 1978)];”;

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

- “(a) one third of any expenditure contemplated in subsection (2) must be allowed to be deducted if withholding tax on royalties contemplated in [Part IVA] Part IVB is payable in respect of that amount at a rate of 10 per cent; or
- (b) one half of any expenditure contemplated in subsection (2) must be allowed to be deducted if withholding tax on royalties contemplated in [Part IVA] Part IVB is payable in respect of that amount at a rate of 15 per cent.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) comes into operation on 1 October 2014 and applies in respect of royalties that are paid or become due and payable on or after that date.

## **Amendment of section 23K of Act 58 of 1962, as inserted by section 49 of Act 24 of 2011 and amended by section 50 of Act 24 of 2011 and section 49 of Act 22 of 2012**

**65.** (1) Section 23K of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (9) of the following subsection:

“(10) This section does not apply in respect of any amount of interest incurred by an acquiring company in terms of—

(a) a debt if that debt was issued, assumed or used directly or indirectly for the purpose of—

- (i) procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 1 July 2013; or
- (ii) redeeming, refinancing, substituting or settling, on or after 1 July 2013, a debt issued, assumed or used directly or indirectly for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 3 June 2011 and on or before 30 June 2013; or

(b) an instrument—

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- (i) issued, assumed or used as contemplated in section 24O in terms of an acquisition transaction entered into on or after 1 July 2013; or
- (ii) used, on or after 1 July 2013, directly or indirectly for the purpose of redeeming, refinancing, substituting or settling an instrument that was issued, assumed or used as contemplated in section 24O in terms of an acquisition transaction entered into on or after 1 January 2013 and on or before 30 June 2013.”.

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

## **Repeal of section 23K of Act 58 of 1962**

**66.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 23K.

(2) Subsection (1) comes into operation on 1 July 2018 and applies in respect of interest incurred on or after that date.

## **Amendment of section 23L of Act 58 of 1962, as inserted by section 50 of Act 22 of 2012**

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

(a) by the deletion in subsection (1) of the definition of “investment policy”;

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

“**‘policy’** means a policy of insurance or reinsurance other than a long-term policy as defined in section 1 of the Long-term Insurance Act[, **1998 (Act No. 52 of 1998)**];”;

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

“(2) No deduction is allowed in respect of any premium incurred by a person in terms of **[an investment]** a policy to the extent that the premium is not taken into account as an expense for the purposes of financial reporting pursuant to IFRS in either the current year of assessment or a future year of assessment.”.

(2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 January 2014 and apply in respect of premiums incurred on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014.

## **Insertion of section 23M in Act 58 of 1962**

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

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## **“Deferral of deductions in respect of debt between a debtor and creditor in a controlling relationship**

23M. (1) For purposes of this section—

‘controlling relationship’ means a relationship where—

(a) a debtor directly or indirectly, taking into account any connected person in relation to that debtor, holds more than 70 per cent of the equity shares or voting rights in a creditor;

(b) a creditor directly or indirectly, taking into account any connected person in relation to that creditor, holds more than 70 per cent of the equity shares or voting rights in a debtor;  
and

(c) any connected person in relation to—

(i) the debtor contemplated in paragraph (a); or

(ii) the creditor contemplated in paragraph (b);

‘creditor’ means a creditor that is not subject to tax under Chapter II;

‘debtor’ means a debtor that is a resident.

(2) Any amount owed by a debtor to a creditor is deemed to be incurred only when that amount is paid by that debtor if that debtor and creditor are in a controlling relationship.

(3) Subsection (2) does not apply to any expenditure incurred in respect of the acquisition of trading stock.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of expenditure incurred on or after that date.

## **Insertion of section 23N in Act 58 of 1962**

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

## **“Limitation of excessive interest deductions in respect of reorganisation and acquisition transactions**

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

‘acquiring company’ means—

(a) a transferee company contemplated in the definition of ‘intra-group transaction’ in section 45(1);

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(b) a holding company contemplated in the definition of ‘liquidation distribution’ in section 47(1); or

(c) a company that acquires an equity share in another company in terms of an acquisition transaction;

**‘acquired company’ means—**

(a) a transferor company or a liquidating company that disposes of assets pursuant to a reorganisation transaction; or

(b) a company in which equity shares are acquired by another company in terms of an acquisition transaction;

**‘acquisition transaction’ means an acquisition transaction contemplated in section 24O applies;**

**‘adjustable taxable income’ means taxable income—**

(a) less—

(i) any interest received or accrued;

(ii) any net income of a controlled foreign company as contemplated in section 9D(2); and

(b) with the addition of—

(i) any interest incurred;

(ii) any deduction or allowance as contemplated in the Act in respect of a capital asset for purposes other than the determination of any capital gain or capital loss; and

(iii) 75 per cent of gross income from the letting of any immovable property,

not taking into account any exchange differences determined in terms of section 24I;

**‘interest’ means interest as defined in section 24J;**

**‘repo rate’ means the interest rate at which the South African Reserve Bank enters into a repurchase agreement contemplated in section 10(1)(j) of the South African Reserve Bank Act;**

**‘reorganisation transaction’ means—**

(a) an intra-group transaction as defined in section 45(1) to which section 45 applies; or

(b) a liquidation distribution as defined in section 47(1) to which section 47 applies.

(2) Where an amount of interest is incurred by an acquiring company in terms of—

(a) a debt—

(i) assumed or applied directly or indirectly for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction; or

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(ii) used directly or indirectly for the purpose of redeeming, refinancing or settling the debt contemplated in subparagraph (i); or

(b) an instrument—

(i) issued, assumed or used as contemplated in section 24O; or

(ii) used directly or indirectly for the purpose of redeeming, refinancing or settling the instrument contemplated in subparagraph (i).

the amount of interest to be allowed as a deduction must not exceed the amount determined in terms of subsections (3) or (4).

(3) The total amount of interest in respect of all debts owed, contemplated in subsection (2)(a), in any year of assessment in which the reorganisation transaction is entered into and for 5 years of assessment immediately following that year of assessment must not exceed—

(a) the total amount of interest received by or accrued to the acquiring company to the extent that, that interest exceeds interest incurred other than interest to which the provisions of this section apply; and

(b) subject to subsection (7), 40 per cent of the higher of the adjustable taxable income of that acquiring company as determined—

(i) in respect of the year of assessment in which the reorganisation transaction is entered into; or

(ii) in respect of the year of assessment in which the interest is incurred.

(4) The total amount of interest in respect of all instruments, contemplated in subsection (2)(b), owed in any year of assessment in which the acquisition transaction is entered into and for 5 years of assessment immediately following that year of assessment must not exceed—

(a) the total amount of interest received by or accrued to the acquiring company to the extent that, that interest exceeds interest incurred other than interest to which the provisions of this section applies; and

(b) subject to subsection (7), 40 per cent of the higher of the adjustable taxable income of the acquired company as determined—

(i) in respect of the year of assessment in which the acquisition transaction is entered into; or

(ii) in respect of the year of assessment in which the interest is incurred.

(5) Where the acquiring company does not hold all of the shares in the acquired company the amount determined in subsection (4) must exclude an amount of interest that bears to the shares held by the acquiring company at the same ratio as the number of months, prior to that acquisition transaction, bears to the total amount of months during that year of assessment.

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(6) Where the average repo rate exceeds 10 per cent during the year of assessment in respect of which the amount of interest is determined as contemplated in subsection (2), the debtor must substitute the percentage contemplated in subsections (3)(b) and (4)(b) with a percentage to be determined in accordance with the formula—

$$A = B \times (C / D)$$

in which formula—

(a) ‘A’ represents the percentage to be applied;

(b) ‘B’ represents 40;

(c) ‘C’ represents the repo rate; and

(d) ‘D’ represents 10.”.

(2) Subsection (1) is deemed to have come into operation in respect of any amount of interest incurred by an acquiring company in terms of—

(a) a debt if that debt was issued, assumed or used directly or indirectly for the purpose of—

(i) procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 1 July 2013;

(ii) redeeming, refinancing or settling any debt issued, assumed or used as contemplated in subparagraph (i); or

(iii) redeeming, refinancing or settling, on or after 1 July 2013, a debt issued, assumed or used directly or indirectly for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction entered into on or after 3 June 2011 and on or before 30 June 2013; or

(b) an instrument—

(i) issued, assumed or used as contemplated in section 24O in terms of an acquisition transaction entered into on or after 1 July 2013;

(ii) redeeming, refinancing or settling an instrument contemplated in subparagraph (i); or

(iii) used, on or after 1 July 2013, directly or indirectly for the purpose of redeeming, refinancing or settling an instrument that was issued, assumed or used as contemplated in section 24O in terms of an acquisition transaction entered into on or after 1 January 2013 and on or before 30 June 2013.

## **Insertion of section 23O in Act 58 of 1962**

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

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## **“Limitation of interest deductions in respect of reorganisation and acquisition transactions between persons in a controlling relationship**

230. (1) For the purposes of this section—

‘acquiring company’ means any acquired company as defined in section 23N;

‘acquired company’ means any acquired company as defined in section 23N;

‘acquisition transaction’ means any acquisition transaction as defined in section 24O;

‘controlling relationship’ means a controlling relationship as defined in section 23M;

‘reorganisation transaction’ means any reorganisation transaction as defined in section 23N.

(2) Notwithstanding any other provision of this Act, any amount of interest incurred by an acquiring company in terms of—

(a) a debt—

(i) assumed or applied directly or indirectly for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction; or

(ii) used directly or indirectly for the purpose of redeeming, refinancing or settling the debt contemplated in subparagraph (i); or

(b) an instrument—

(i) issued, assumed or used as contemplated in section 24O; or

(ii) that is used directly or indirectly for the purpose of redeeming, refinancing or settling the instrument contemplated in subparagraph (i),

that would be allowed as a deduction under the provisions of this Act will be disallowed if the acquiring company and acquired company are in a controlling relationship during any 18 month period in the 36 month period preceding the period in which the debt is applied or assumed.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of acquisition transactions or reorganisation transactions entered into or after that date.

## **Insertion of section 23P in Act 58 of 1962**

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

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## **“Limitation of excessive interest deductions in respect of a debt owed to a person not subject to tax under Chapter II**

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

‘adjustable taxable income’ means the adjustable taxable income as defined in section 23N;

‘controlling relationship’ means a controlling relationship as defined in section 23M;

‘creditor’ means a creditor as defined in section 23M;

‘debtor’ means a debtor as defined in section 23M;

‘interest’ means interest as defined in section 24J;

‘lending institution’ means a foreign bank which is comparable to a bank contemplated in the Banks Act;

‘repo rate’ means the repo rate as defined in section 23N.

(2) Where an amount of interest is incurred by a debtor in respect of a debt owed to—

(a) a creditor in a controlling relationship with that debtor; or

(b) a creditor that is not in a controlling relationship with that debtor, and—

(i) that creditor obtained the funding for the debt advanced to the debtor from a person that is in a controlling relationship with that debtor, or

(ii) that debt advanced by that creditor to that debtor is guaranteed by a person that is in a controlling relationship with the debtor,

the deductible amount of interest may not exceed the amount determine in subsection (3).

(3) The total amount of interest in respect of all debts owed, contemplated in subsection (2), in any year of assessment in which the debt is owed must not exceed—

(a) the total amount of interest received by or accrued to the debtor to the extent that, that interest exceeds interest incurred other than interest to which the provisions of this section applies; and

(b) subject to subsection (5), 40 per cent of the adjustable taxable income of that debtor determined in respect of the year of assessment in which the debt is owed,

reduced by any interest incurred by the debtor in respect of a debt owed to persons that are not in a controlling relationship with the debtor other than to persons contemplated in subsection (2).

(4) To the extent that the total amount of interest incurred by the debtor contemplated in subsection (2) exceeds the total amount of interest incurred as determined in subsection (3), the excess interest—



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(a) may be carried forward to the immediately succeeding year of assessment and deemed, for the purposes of subsection (2), to be interest incurred in that succeeding year of assessment; and

(b) must not be carried forward for more than 10 years from the year of assessment in which that interest was for the first time carried forward.

(5) Where the average repo rate exceeds 10 per cent during the year of assessment in which the amount of interest is determined in subsection (3), the debtor must substitute the percentage with a percentage to be determined in accordance with the formula—

$$A = B \times (C / D)$$

in which formula—

(a) “A” represents the percentage to be applied;

(b) “B” represents 40;

(c) “C” represents the repo rate; and

(d) “D” represents 10.

(6) This section does not apply—

(a) to interest incurred by a debtor in respect of a debt owed to a creditor, contemplated in subsection (2), that funded that debt with funding granted by a lending institution that is not in a controlling relationship with that debtor; and

(b) that funding is determined directly on the strength of the market value of the assets of the creditor when compared to the market value of the liabilities of the creditor.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of interest incurred on or after that date.

## **Repeal of section 24B of Act 58 of 1962**

**72.** (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 24B.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of acquisitions made on or after that date.

## **Amendment of section 24BA of Act 58 of 1962, as inserted by section 52 of Act 22 of 2012**

**73.** (1) Section 24BA of the Income Tax Act, 1962, is hereby amended—

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

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“Notwithstanding paragraph 11(2)(b) of the Eighth Schedule [**and subject to section 24B**], where a company acquires an asset from a person in exchange for the issue by that company to that person of shares in that company as contemplated in subsection (2) and the market value of—”;

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

“(4) This section must not apply where a company acquires an asset from a person as contemplated in subsection (2)(a) if—

(a) (i) that company and that person form part of the same group of companies immediately after that company acquires that asset; or

(ii) that person holds all the shares in that company immediately after that company acquires that asset; or

(b) paragraph 38 of the Eighth Schedule applies.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of transactions entered into on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

## **Repeal of section 24F of Act 58 of 1962**

74. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 24F.

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

**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, section 20 of Act 3 of 2008, section 47 of Act 7 of 2010, section 52 of Act 24 of 2011 and section 53 of Act 22 of 2012**

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

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

“(b) owing by or to that person in respect of a debt, other than a hybrid debt instrument contemplated in section 8F, incurred by or payable to such person;”;

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(b) by the addition in subsection (1) to the definition of “local currency” after paragraph (d) of the following paragraph:

“(e) any domestic treasury management company in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, the functional currency of that domestic treasury management company;”;

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

“(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsections (10) and (10A); and”;

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

“(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to **[subsections (10) and]** subsection (10A); and”;

(e) by the deletion in subsection (7A) in paragraph (f) of the fullstop;

(f) by the addition to subsection (7A) after paragraph (f) of the following proviso:

“: Provided that any qualifying exchange item contemplated in this subsection that is held and not realised before the last day of the last year of assessment of a person (that is the holder or issuer of that qualifying exchange item) ending before the year of assessment of that person commencing on or after 1 January 2014 shall be deemed to have been realised on that last day”;

(g) by the deletion of subsection (7A);

(h) by the deletion of subsection (10);

(i) by the substitution in subsection (10A)(b)(ii) for the words following subparagraph (bb) of the following words:

“an amount in respect of that exchange item must be included in or deducted from the income of that person in that subsequent year of assessment or in the year of assessment during which the exchange item is realised (other than a deemed realisation contemplated in the further proviso to subsection (10) and the proviso to subsection (7A)), which amount shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the last day of the year of assessment immediately preceding that subsequent year of assessment and the ruling exchange rate on transaction date, less any amount of the exchange differences included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment preceding that subsequent year of assessment during which the person was a party to the contractual provisions of the exchange item.”;

(j) by the substitution in subsection (10A)(b)(ii) for the words following subparagraph (bb) of the following words:

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“an amount in respect of that exchange item must be included in or deducted from the income of that person in that subsequent year of assessment or in the year of assessment during which the exchange item is realised [(other than a deemed realisation contemplated in the further proviso to subsection (10) and the proviso to subsection (7A)),] which amount shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the last day of the year of assessment immediately preceding that subsequent year of assessment and the ruling exchange rate on transaction date, less any amount of the exchange differences included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment preceding that subsequent year of assessment during which the person was a party to the contractual provisions of the exchange item.”; and

(k) by the deletion of subsection (11A).

(2) Paragraph (a) comes into operation on 1 January 2014 and applies in respect of amounts incurred or accrued on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 27 February 2013 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraphs (c) and (i) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(5) Paragraphs (e) and (f) of subsection (1) is deemed to have come into operation on 1 July 2013.

(6) Paragraphs (d), (g), (h), (j) and (k) of subsection (1) come into operation on 1 January 2014 and apply in respect of years of assessment commencing on or after that date.

**Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996, section 19 of Act 28 of 1997, section 27 of Act 53 of 1999, section 24 of Act 32 of 2004, section 10 of Act 9 of 2005, section 20 of Act 20 of 2006, section 53 of Act 24 of 2011 and section 54 of Act 22 of 2012**

**76.** (1) Section 24J of the Income Tax Act, 1962, is hereby amended—

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

“(c) any [**form of**] interest-bearing arrangement or [**any**] debt;”;

(b) by the substitution in subsection (1) for paragraph (c) of the proviso to the definition of “yield to maturity” of the following paragraph:

“(c) any variation in the terms or conditions of such instrument takes place or any variation in any amount payable or receivable in terms of such instrument takes place which will

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result in a change in such rate of compound interest in relation to such instrument, the rate of compound interest shall be redetermined in relation to such instrument with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation; **[or]**”;

(c) by the addition in subsection (1) after paragraph (d) of the proviso to the definition of “yield to maturity” of the word “or”;

(d) by the addition in subsection (1) after paragraph (d) to the proviso to the definition of “yield to maturity” of the following paragraph:

“(e) in the case of an instrument of which the date of redemption is subject to change during a year of assessment, the rate of compound interest shall be redetermined in relation to such instrument with reference to—

(i) the appropriate adjusted initial amount in relation to such instrument; and

(ii) the changed date of redemption”.

(e) by the addition in subsection (9) to paragraph (a) of the following proviso:

“: Provided that any company may not make an election or apply any agreement entered into with the Commissioner as contemplated in this subsection in respect of years of assessment ending on or after 1 January 2014”;

(f) by the addition after subsection (9) of the following subsection:

“(9A) Any taxpayer that made an election contemplated in paragraph (a) and applied any agreement entered into with the Commissioner as contemplated in this subsection is deemed to have—

(i) disposed of all instruments, interest rate agreements or option contacts contemplated in paragraph (a); and

(ii) re-acquired the instruments, interest rate agreements or option contacts, held and not disposed of, at the end of the year of assessment immediately preceding the year of assessment commencing on or after 1 January 2014, for an amount equal to the market value, as contemplated in subsection (9)(c), on the last day of that immediately preceding year of assessment.”;

(2) Paragraphs (a), (b), (c) and (d) of subsection (1) are deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraphs (e) and (f) of subsection (1) are deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

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## **Amendment of section 24JA of Act 58 of 1962, as inserted by section 48 of Act 7 of 2010 and amended by section 54 of Act 24 of 2011 and section 55 of Act 22 of 2012**

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

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

(2) Subsection (1) comes into operation on 1 January 2014.

## **Substitution of section 24JB of Act 58 of 1962**

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

### **“Fair value taxation in respect of financial instruments**

**24JB.** (1) For the purposes of this section—

**‘covered person’ means—**

(a) any authorised user as defined in section 1 of the Securities Services Act that is a company;

(b) the South African Reserve Bank;

(c) any—

(i) bank;

(ii) branch;

(iii) branch of a bank; or

(iv) controlling company,

as defined in section 1 of the Banks Act;

(d) any company or trust that forms part of a banking group as defined in section 1 of the Banks Act, excluding—

(i) a company that is a long-term insurer as defined in section 1 of the Long-term Insurance Act;

(ii) a company that is a short-term insurer as defined in section 1 of the Short-term Insurance Act;

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(iii) a company of which more than 50 per cent of the shares are directly or indirectly held by a company contemplated in subparagraph (i) or (ii) if that company does not form part of the same group of companies as a bank;

‘**derivative**’ means a derivative as defined in and within the scope of International Accounting Standard 39 of IFRS or any other International Accounting Standard that replaces International Accounting Standard 39;

‘**financial asset**’ means—

(a) a financial asset defined in and within the scope of International Accounting Standard 32 of IFRS or any other International Accounting Standard that replaces International Accounting Standard 32; and

(b) a commodity taken into account in terms of IFRS at fair value less cost to sell in profit or loss in the statement of comprehensive income;

‘**financial instrument**’ means any financial asset or financial liability;

‘**financial liability**’ means a financial liability defined in and within the scope of International Accounting Standard 32 of IFRS or any International Accounting Standard that replaces International Accounting Standard 32;

‘**financial reporting value**’, in relation to a financial asset or a financial liability, means the value, as determined for the purposes of financial reporting pursuant to IFRS, of that financial asset or financial liability;

‘**post-realisation years**’, in relation to a person, means—

(a) the first year of assessment contemplated in paragraph (a) or (b), as the case may be, of the definition of “realisation year” of that covered person; and

(b) the year of assessment of that person succeeding that first year of assessment of that person;

‘**realisation year**’, in relation to a person, means—

(a) where that person is a covered person, the year of assessment of that person immediately preceding the year of assessment ending on or after 1 January 2014, that year of assessment; or

(b) where that person becomes a covered person during any year of assessment ending after 1 January 2014, the year of assessment of that person that precedes the first year of assessment of that person in which that person becomes a covered person;

‘**tax base**’ means tax base as defined in International Accounting Standard 12 of IFRS or any International Accounting Standard replacing International Accounting Standard 12.

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(2) Subject to subsection (4), there must be included in or deducted from the income, as the case may be, of any covered person for any year of assessment all amounts in respect of financial assets and financial liabilities of that covered person that are recognised at fair value in profit or loss in terms of IFRS or in the case of commodities, fair value less cost to sell in profit or loss in the statement of comprehensive income of that covered person for that year of assessment, excluding any amount in respect of—

(a) a financial asset (other than a derivative) which was upon initial recognition designated by the covered person at fair value through profit or loss in terms of International Accounting Standard 39 of IFRS or any other standard that replaces that standard if that financial asset is—

(i) a share;

(ii) an endowment policy;

(iii) an interest held in a portfolio of a collective investment scheme; or

(iv) an interest in a trust,

which is of a capital nature; or;

(b) a dividend or foreign dividend received by or accrued to a covered person.

(3) Any amount in respect of a financial asset or a financial liability that is included in or deducted from the income of a covered person for any year of assessment as contemplated in subsection (2) must not be taken into account in determining—

(a) gross income;

(b) any deduction in terms of section 11 deducted in terms of subsection (2);

(c) taxable income, other than to the extent that the amount is included as income in terms of subsection (2); and

(d) any capital gain or capital loss of that person as contemplated in the Eighth Schedule.

(4) Subsection (2) does not apply to any amount in respect of a financial asset or a financial liability of a covered person where—

(a) a covered person and another person that is not a covered person, are parties to an agreement in respect of a financial instrument; and

(b) the agreement contemplated in paragraph (a) was entered into solely or mainly for the purpose of a reduction, postponement or avoidance of liability for tax, which, but for that agreement, would have been or would become payable by the covered person.

(5) In addition to any amount included in or deducted from the income of any person in terms of subsection (2), there must be included in or deducted from the income, as the case may



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be. of any person for the post-realisation years of that person an amount determined in terms of subsection (6).

(6) The amount to be included in or deducted from the income of any person as contemplated in subsection (5) is an amount equal to 50 per cent of the aggregate of—

(a) the difference between—

(i) the financial reporting values of all financial assets taken into account under subsection (2) held by that person as at the end of the realisation year of that person;  
and

(ii) the tax base amount attributed to those financial assets as at the end of the realisation year of that person; and

(b) the difference between—

(i) the financial reporting values of all financial liabilities taken into account under subsection (2) held by that person as at the end of the realisation year of that person;  
and

(ii) the tax base amount attributed to those financial liabilities as at the end of the realisation year of that person.

(7) If a person ceases to be a covered person before the expiry of the post-realisation years of that person, the amounts determined in terms of subsection (6) which have not been included in or deducted from, as the case may be, the income of that person, must be included in or deducted from the income of that person in the year of assessment that it ceases to be a covered person.

(8) Where a person ceases to be a covered person, that person is deemed to have—

(a) disposed of its financial assets and redeemed its financial liabilities that were subject to tax in terms of subsection (2); and

(b) immediately reacquired those financial assets and incurred those financial liabilities, at an amount equal to the market value of those financial assets on the last day of the year of assessment of that person before that person ceased to be a covered person.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

**Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010, section 55 of Act 24 of 2011 and section 58 of Act 12 of 2012**

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79. (1) The Income Tax Act, 1958, is hereby amended by the substitution of section 25BA of the following section:

“25BA. (1) Subject to subsection (2), any amount distributed by a portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property, to a person that is a holder of a participatory interest in that portfolio will be deemed to be included in the gross income of that person: Provided that this section will not apply—

(a) if that amount is consideration for the acquisition of any participatory interest in that portfolio from that person; or

(b) if that amount constitutes a distribution of a participatory interest in that portfolio to that person.

(2) If that amount is attributable to a dividend received by or accrued to that portfolio and distributed within 12 months from the receipt by or accrual to the portfolio, it will be deemed to have directly accrued to that person on the date of distribution.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment of the portfolio of the collective investment scheme commencing on or after that date.

## **Amendment of section 25BB of Act 58 of 1962, as inserted by section 59 of Act 22 of 2012**

80. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 25BB of the following section:

### **“Taxation of REITs**

**25BB. (1) For the purposes of this section—**

**[‘associated property company’ means a company in which 20 per cent or more of the equity shares or linked units are held by a REIT or a controlled property company (whether alone or together with any other company forming part of the same group of companies as that REIT or that controlled property company);]**

**‘controlled [property] company’ means a company, that is a subsidiary, as defined in IFRS, of a REIT;**

**[‘declared’, in relation to any dividend, means the approval thereof by the directors of a company, or by some other person with comparable authority;]**

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‘**[property] linked unit**’ means a unit comprising a share and a debenture in a company, where that share and that debenture are linked together and **[cannot be disposed of independently of each other]** are traded together as a single unit;

‘**property company**’ means a company in the case where—

- (a) 80 per cent or more of the market value of all the assets of that company are directly or indirectly attributable to immovable property; and
- (b) a REIT or a controlled company holds at least 10 per cent of the equity shares in that company;

‘**qualifying distribution**’ means any dividend (other than a dividend contemplated in paragraph (b) of the definition of ‘dividend’) **[declared]** paid or payable, or interest incurred in respect of a debenture forming part of a **[property]** linked unit, taken into account for purposes of financial reporting during a year of assessment, if—

- (a) in the case of a REIT[,] or a controlled **[property]** company **[or an associated property company]** that is incorporated, formed or established during that year of assessment, more than 75 per cent of the gross income received by or accrued to that REIT[,] or that controlled **[property]** company **[or that associated property company]** until the date of the declaration consists of rental income; or
- (b) in any other case, more than 75 per cent of the gross income received by or accrued to a REIT[,] or a controlled **[property]** company **[or an associated property company]** in the preceding year of assessment consists of rental income;

Provided that a dividend received or accrued from any company that is not a REIT or controlled company at the time of that disposal must not be taken into account;

‘**rental income**’ means any amount received or accrued—

- (a) in respect of the use of immovable property, including a penalty or interest in respect of late payment of any such amount;
- (b) as a dividend (other than a dividend contemplated in paragraph (b) of the definition of ‘dividend’) from a REIT that is a REIT at the time of the distribution of that dividend; or
- (c) as a qualifying distribution from a controlled **[property]** company that is a controlled company at the time of that distribution; **or**
- (d) **as a qualifying distribution by or from an associated property company**].

(2)(a) There must be deducted from the gross income for a year of assessment of—

- (i) a REIT; or
- (ii) a controlled **[property]** company that is a resident,

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the amount of any qualifying distribution **[declared or incurred during]** taken into account for financial reporting purposes in respect of that year of assessment by that REIT or that controlled **[property]** company if that REIT or that controlled company is a REIT or a controlled company on the last day of that year of assessment.

(b) The aggregate amount of the deductions contemplated in paragraph (a) may not exceed the taxable income for that year of assessment of that REIT or that controlled **[property]** company, before taking into account—

- (i) the amount of taxable capital gain included in taxable income in terms of section 26A; and
- (ii) any deduction in terms of this subsection.

(3) (a) Any amount received by or accrued to a company that is a REIT or a controlled **[property]** company **[during]** on the last day of a year of assessment in respect of a financial instrument (other than a share in a REIT[,] or a controlled **[property]** company **[or an associated property company]** that is a REIT or controlled company on the date of that receipt or accrual) must—

**[(a)](i)** be deemed to be an amount that is not of a capital nature; and

**[(b)](ii)** be included in the income of that REIT or that controlled **[property]** company for that year of assessment.

(b) Paragraph (a) must not apply to any amount received or accrued in respect of the disposal of a share in a company that is a property company at the time of that receipt or accrual.

(4) A company that is a REIT or a controlled **[property]** company on the last day of a year of assessment may not deduct by way of an allowance any amount in respect of immovable property in terms of section 11(g), 13, 13bis, 13ter, 13quat, 13quin or 13sex.

(5) In determining the aggregate capital gain or capital loss of a company that is a REIT or a controlled **[property]** company on the last day of a year of assessment for purposes of the Eighth Schedule, any capital gain or capital loss determined in respect of the disposal of—

- (a) immovable property;
- (b) a share in a company that is a REIT at the time of that disposal; or
- (c) a share in a **[controlled]** a company that is a property company at the time of that disposal,

must be disregarded.

(6) (a) Any amount of interest received by or accrued to a person during a year of assessment in respect of a debenture forming part of a **[property]** linked unit in a company that

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is a REIT or a controlled [property] company held by that person must be deemed to be a dividend received by or accrued to that person during that year of assessment if that company is a REIT or a controlled company at the time of that receipt or accrual.

(b) Any amount of interest paid in respect of a [property] linked unit in a REIT or a controlled [property] company must be deemed—

- (i) to be a dividend paid by that REIT or that controlled [property] company for the purposes of the dividends tax contemplated in Part VIII of this Chapter; and
- (ii) not to be amount of interest paid by that REIT or that controlled [property] company for the purposes of the withholding tax on interest contemplated in Part [IA] IVA of this Chapter.

(7) If a company ceases to be a REIT or a controlled company during any year of assessment—

(a) that year of assessment of that REIT or controlled company is deemed to end on the day that the company ceases to be a REIT or a controlled company; and

(b) the following year of assessment of that company is deemed to commence on the day immediately after that company ceased to be a REIT or a controlled company.

(8) If a REIT or property company, cancels the debenture part of a linked unit without compensation and capitalises the face value of the debenture to stated capital in pursuance of accounting—

(a) section 19 and paragraph 12A of the Eighth Schedule must not apply;

(b) the cancellation of the debenture must be disregarded by the holder of the debenture; and

(c) expenditure incurred by the shareholder of the REIT in respect of the shares must be equal to the amount of the expenditure incurred in respect of the acquisition of the linked unit.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000 and amended by section 37 of Act 60 of 2001, section 28 of Act 74 of 2002, section 44 of Act 45 of 2003, section 35 of Act 31 of 2005, section 41 of Act 35 of 2007 and section 50 of Act 7 of 2010**

**81.** (1) Section 25D of the Income Tax Act, 1962 is hereby amended by the addition after subsection (4) of the following subsections:

“(5) Where, during any year of assessment—

(a) any amount—

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(i) is received by or accrued to; or

(ii) of expenditure is incurred by,

a domestic treasury management company in any currency other than the functional currency of the domestic treasury management company; and

(b) the functional currency of that domestic treasury management company is a currency other than the currency of the Republic.

that amount must be determined in the functional currency of the domestic treasury management company and must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

(6) Where, during any year of assessment any amount is received by or accrues to, or of expenditure is incurred by, an international shipping company in any currency other than that of the Republic, that amount must be—

(a) determined in the functional currency of the international shipping company; and

(b) translated to the currency of the Republic by applying the average exchange rate for that year of assessment.”.

(2) Subsection (1) is deemed to have come into operation on 27 February 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007, section 40 of Act 60 of 2008, section 40 of Act 17 of 2009, section 51 of Act 7 of 2010 and section 61 of Act 22 of 2012**

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

(a) by the deletion in subsection (1) of the definition of “Short-term Insurance Act”;

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

“ **‘short-term policy’** means a short-term policy as defined in the Short-term Insurance Act [, **which is issued by a short-term insurer**].”;

(c) by the substitution for subsections (2), (3), (4) and (5) of the following subsections:

“(2) For the purpose of determining the taxable income derived during a year of assessment by any **[person]** short-term insurer that is a resident from carrying on short-term insurance business—

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- (a) a premium received by or accrued to that person in respect of a short-term policy issued by that **[person]** short-term insurer prior to the date of commencement of the risk cover under that policy shall be deemed to have been received by or accrued to that **[person]** short-term insurer on the date of commencement of the risk cover under that policy;
- (b) an amount of expenditure actually incurred by that **[person]** short-term insurer in respect of a refund of a premium in respect of a short-term policy issued by that short-term insurer may only be deducted in terms of section 11(a) to the extent that the amount of the premium was included in the gross income of that **[person]** short-term insurer;
- (c) **[(i) sections 23(c) and 23H shall not apply to expenditure incurred in respect of a short-term policy issued by that person; and**  
**(ii) section 23H shall not apply to expenditure incurred in respect of a reinsurance policy entered into by that person;]**  
an amount of expenditure payable by that short-term insurer in respect of any claim in terms of a short-term policy—  
(i) may be deducted in terms of section 11(a) to the extent that the amount has been paid by that short-term insurer; and  
(ii) to the extent that the amount has been paid by the short-term insurer, sections 23(c) and 23H shall not apply to that expenditure;
- (d) **[an amount of expenditure payable by that person in respect of any claim in terms of a short-term policy may only be deducted in terms of section 11(a) on the date that the amount is paid by that person;]**  
section 23H shall not apply to expenditure (other than expenditure contemplated in paragraph (c)) incurred in respect of—  
(i) a short-term policy issued by that short-term insurer; or  
(ii) a policy of reinsurance if that short-term insurer is the holder of that policy; and
- (e) an amount recoverable by that **[person]** short-term insurer in respect of a claim incurred under a short-term policy issued by that short-term insurer shall only be included in the income of that **[person]** short-term insurer when the amount is received by that **[person]** short-term insurer.

(3) Notwithstanding the provisions of section 23(e), for the purpose of determining the taxable income derived during a year of assessment by any **[person]** short-term insurer that is a resident from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that **[person]** short-term insurer—

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- (a) the amount [**estimated to become payable**] which the short-term insurer estimates will become payable in respect of claims incurred under short-term insurance policies as contemplated in section 32(1)(a) of the Short-term Insurance Act that are—
- (i) reported but not yet paid, reduced by the amount which the short-term insurer estimates will be paid in respect of those claims under policies of reinsurance; and
  - (ii) not yet reported, reduced by the amount which the short-term insurer estimates will be paid in respect of those claims under policies of reinsurance, being an amount not less than the amount calculated in accordance with Part II of Schedule 2 to the Short-term Insurance Act,

in respect of that year of assessment[: **Provided that the amount to be taken into account shall be the amount which that person estimates will be recoverable by that person in respect of all reinsurance policies entered into by that person**]; and

- (b) the amount of [**the**] an unearned premium provision [contemplated in] calculated in accordance with section 32(1)(b) of the Short-term Insurance Act, being an amount not less than the amount calculated in accordance with Part II of Schedule 2 of [the Short-term Insurance] that Act in respect of that year of assessment: Provided that[—
- (i) **consideration payable in respect of all reinsurance policies entered into by that person shall be taken into account; and**
  - (ii) a reserve for a cash-back bonus contemplated in paragraph 4.1.1 of Board Notice 169 of 2011, published in *Gazette* No. 34715 of 28 October 2011, may only be taken into account if the reserve is determined in accordance with a method comprising a best estimate of the liability plus a risk margin, and [**such**] that method is approved by the Financial Services Board.

(4) The total of all amounts deducted from the income of a [**person**] short-term insurer in respect of a year of assessment in terms of subsection (3) shall be included in the income of that [**person**] short-term insurer in the following year of assessment.

(5) The sum of all amounts contemplated in section 32(1)(a) and (b) of the Short-term Insurance Act and deducted from the sum of all premiums and other amounts received by or accrued to a [**person**] short-term insurer in respect of any year of assessment [**in terms of subsection (2)(cA)**] shall be included in the income of that [**person**] short-term insurer in the following year of assessment.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.



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**Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006, section 21 of Act 3 of 2008 and section 62 of Act 22 of 2012**

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

(a) by the deletion in subsection (1) of the definition of “Long-term Insurance Act”;

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

“the amount of any expenses, allowances and transfers to be allowed as a deduction in the policyholder funds in terms of this Act shall[, **subject to subsections (11A), (11B) and (11C),**] be limited to the total of—”;

(c) by the addition to subsection (11)(a)(ii)(B) after subsubitem (BB) of the following subsubitem:

“(CC) any losses carried forward from previous years of assessment;”;

(d) by the addition to subsection (11)(a)(ii)(C) after subsubitem (CC) of the following subsubitem:

“(DD) the difference between the market value as defined in section 29B and the base cost of any asset held at the end of the year of assessment; and”;

(e) by the substitution in subsection (11) for paragraph (h) of the following paragraph:

“(h) no amount may be deducted by way of an allowance in respect of an asset as defined in the Eighth Schedule other than a financial instrument.”;

(f) by the deletion of subsections (11A), (11B) and (11C).

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraphs (b), (c), (d), (e) and (f) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

**Amendment of section 29B of Act 58 of 1962, as inserted by section 63 of Act 22 of 2012**

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

(a) by the substitution in subsection (1) in paragraph (a) of the definition of “market value” for subparagraph (i) of the following subparagraph:

“(i) an exchange as defined in section 1 of the Securities Services Act[, **2004 (Act No. 36 of 2004),**] and licensed under section 10 of that Act; or”;

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

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“An insurer must[, on 29 February 2012,] be deemed to have disposed of each asset held by that insurer on 29 February, at the close of the day, in respect of all its policyholder funds, other than an asset that constitutes—”;

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

“(b) The amount to be determined for the purposes of paragraph (a) is an amount equal to the aggregate of all capital gains and capital losses determined in respect of the disposal[, on 29 February 2012,] of any asset as contemplated in subsection (2).”

(d) by the addition to subsection (5) after paragraph (b) of the following paragraph:

“(c) Where a person ceases to conduct the business of an insurer prior to the expiration of the three years of assessment contemplated in paragraph (a), any amount determined in terms of paragraph (b) must, to the extent that the amount has not been included as contemplated in paragraph (a), be so included in the year of assessment during which the person ceases to conduct the business of an insurer.”; and

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

“(6) This section does not apply to any asset held by an insurer if that insurer is a Category III Financial Services Provider and that asset is held by that insurer in its capacity as a Category III Financial Services Provider solely for the purpose of providing a linked policy as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998).”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) are deemed to have come into operation on 29 February 2012.

**Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 36 of Act 59 of 2000, section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008, section 41 of Act 17 of 2009, section 53 of Act 7 of 2010 and section 8 of Act 21 of 2012**

**85.** (1) Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in paragraph (a) of the definition of “public benefit organisation” for subparagraph (i) of the following subparagraph:

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

(2) Subsection (1) comes into operation on 1 January 2014.

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**Amendment of section 30A of Act 58 of 1962, as amended by section 26 of Act 8 of 2007, section 42 of Act 60 of 2008, section 42 of Act 17 of 2009, section 54 of Act 7 of 2010 and section 9 of Act 21 of 2012**

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

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

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of section 30B of Act 58 of 1962, as inserted by section 55 of Act 7 of 2010 and amended by section 56 of Act 24 of 2011**

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

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

“(i) non-profit company as defined in section 1 of the Companies Act[, **2008 (Act No. 71 of 2008);**]”; and

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

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

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 31 of Act 58 of 1962, as substituted by section 56 of Act 24 of 2011 and amended by section 64 of Act 22 of 2012**

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

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

“includes [**the provision of**] any—”

(b) by the substitution in subsection (1) for the full stop after the definition of “financial assistance” of a semi-colon;

(c) by the substitution in subsection (4) for the proviso to the definition of “connected person” of the following proviso:

“: Provided that the expression ‘and no [**shareholder**] holder of shares holds the majority voting rights in the company’ in paragraph (d)(v) of that definition must be disregarded”; and

(d) by the addition after subsection (6) of the following subsection:

“(7) Where—

(a) any transaction, operation, scheme, agreement or understanding has been entered into between a company that is a resident (for purposes of this subsection referred to as ‘resident company’) and any foreign company in which that resident company directly or indirectly (whether alone or together with any other resident company) holds at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting of financial assistance that constitutes a debt by that resident company to that foreign company;

(b) that foreign company is not obliged to redeem that debt in full within 30 years from the date the debt is granted; and

(c) the redemption of the debt in full by the foreign company—

(i) requires approval from all other persons to which that foreign company owes a debt; or

(ii) is conditional upon the market value of the assets of the foreign company not being less than the liabilities of the foreign company.

this section must not apply to that debt.”.

(2) Paragraphs (a), (b) and (d) of subsection (1) come into operation on 1 January 2014 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2014.

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

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**Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008, section 43 of Act 17 of 2009, section 57 of Act 7 of 2010 and section 60 of Act 24 of 2011**

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

(a) by the substitution in subsection (7F) for the words preceding the proviso of the following words:

“The aggregate of the amounts of capital expenditure determined under subsection (7C) in respect of any year of assessment in relation to any one mine shall, unless the Minister [**of Finance**], after consultation with the [**Minister of Mineral and Energy Affairs**] Cabinet member responsible for mineral resources and having regard to any relevant fiscal, financial or technical implications, otherwise directs, not exceed the taxable income (as determined before the deduction of any amount allowable under section 15(a), but after the set-off of any balance of assessed loss incurred by the taxpayer in relation to that mine in any previous year which has been carried forward from the preceding year of assessment) derived by the taxpayer from mining on that mine, and any amount by which the said aggregate would, but for the provisions of this subsection, have exceeded such taxable income as so determined, shall be carried forward and be deemed to be an amount of capital expenditure incurred during the next succeeding year of assessment in respect of that mine”;

(b) by the substitution in subsection (11) in paragraph (aa) of the proviso to paragraph (c) of the definition of “capital expenditure” for subparagraph (B) of the following subparagraph:

“(B) prospecting right, mining right, exploration right or production right, mining permit or retention permit issued in terms of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**];” and

(c) by the substitution in subsection (11) for paragraph (e) of the definition of “capital expenditure” of the following paragraph:

“(e) where that trade constitutes mining, any expenditure incurred in terms of a mining right pursuant to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**,] other than in respect of infrastructure or environmental rehabilitation;”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2013.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2014.

**Amendment of section 37A of Act 58 of 1962, as inserted by section 27 of Act 89 of 1969, amended by section 18 of Act 52 of 1970, section 22 of Act 88 of 1971, section 30 of Act 85 of 1974, section 26 of Act 94 of 1983, section 27 of Act 20 of 2006, section 28 of Act 8 of 2007 and section 47 of Act 35 of 2007**

# DRAFT

90. (1) Section 37A of the Income Tax Act, 1962, is hereby amended—

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

“(aa) holds a permit or right in respect of prospecting, exploration, mining or production, an old order right or OP26 right as defined in item 1 of Schedule II or any reservation or permission for or right to the use of the surface of land as contemplated in item 9 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**]; or”;

(b) by the substitution in subsection (2)(a) for subparagraphs (i), (ii) and (iii) of the following subparagraphs:

“(i) collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act[, **2002 (Act No. 45 of 2002)**];

(ii) long-term insurer as regulated in terms of the [**Long-Term**] Long-term Insurance Act[, **1998 (Act No. 52 of 1998)**];

(iii) bank as regulated in terms of the Banks Act[, **1990 (Act No. 94 of 1990)**]; or”;

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

“To the extent that the [**Minister of Minerals and Energy**] Cabinet member responsible for mineral resources is satisfied that all of the areas in terms of any permit, right, reservation or permission contemplated in subsection (1)(d)(i)(aa) that have been rehabilitated as contemplated in subsection (1)(a), the company or trust in respect of those areas must be wound-up or liquidated and its assets remaining after the satisfaction of its liabilities must be transferred to—”;

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

“(b) if no such company or trust has been established, to an account or trust prescribed by the [**Minister of Minerals and Energy**] Cabinet member responsible for mineral resources as approved of by the Commissioner if the Commissioner is satisfied that such company or trust satisfies the objects of subsection (1)(a).”;

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

“If the [**Minister of Minerals and Energy**] Cabinet member responsible for mineral resources is satisfied that a company or trust as contemplated in subsection (1)(a)—”.

(2) Subsection (1) comes into operation on 1 January 2014.

# DRAFT

## **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, section 44 of Act 17 of 2009 and section 66 of Act 22 of 2012**

**91.** (1) Section 37B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

“(a) in the case of a new and unused environmental treatment and recycling asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an “instalment credit agreement” in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991)**], 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 a new and unused environmental waste disposal asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an “instalment credit agreement” in section 1 of the Value-Added Tax Act[, **1991 (Act No. 89 of 1991)**], 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.”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of 37C of Act 58 of 1962 as inserted by section 46 of Act 60 of 2008**

**92.** (1) Section 37C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for the words following paragraph (b) of the following words:

“**[an amount equal to 10 per cent of the lesser of the cost or market value of]** the declaration of the land without regard to any right of use retained by any taxpayer is deemed to be a donation of immovable property for purposes of section 18A and paragraph 62 of the Eighth Schedule **[deemed to be a donation paid or transferred]** to the Government for which a receipt has been issued in terms of section 18A(2), in the year of assessment in which the land is so declared **[and each of the succeeding nine years of assessment]**.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of declarations made during years of assessment commencing on or after that date.

## **Deletion of Part IA of Chapter II of Act 58 of 1962**

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**93.** (1) The Income Tax Act, 1962, is hereby amended by the deletion in Chapter II of Part IA.

(2) Subsection (1) comes into operation on 1 October 2014 and applies in respect of interest received or accrued on or after that date.

## **Amendment of section 40C of Act 58 of 1962, as inserted by section 70 of Act 22 of 2012**

**94.** (1) Section 40C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“~~[(1)]~~ Where a company—”.

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

## **Amendment of section 40CA of Act 58 of 1962, as inserted by section 71 of Act 22 of 2012**

**95.** (1) Section 40CA of the Income Tax Act, 1962 is hereby amended—

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

“~~[(1)]~~ Subject to section 24B, if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person in exchange for—”; and

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

“~~[Subject to section 24B, if]~~ If a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person in exchange for—”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2013.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014 and applies in respect of acquisitions made 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, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, section 128 of Act 60 of 2008, section 47 of Act 17 of 2009, section 61 of Act 7 of 2010, section 67 of Act 24 of 2011 and section 73 of Act 22 of 2012**

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

(a) by the substitution in subsection (1) in paragraph (b) of the definition of “domestic financial instrument holding company” for subparagraphs (i), (ii), (iii), (iv) and (vi) of the following subparagraphs:



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- “(i) a bank regulated in terms of the Banks Act[, 1990 (Act No. 94 of 1990)];
- (ii) an authorised user regulated in terms of the Security Services Act[, 2004];
- (iii) an insurer regulated in terms of the **[Long-Term] Long-term** Insurance Act[, 1998 (Act No. 52 of 1998)];
- (iv) an insurer regulated in terms of the Short-term Insurance Act[, 1998 (Act No. 53 of 1998)]; or
- (iv) a collective investment scheme regulated in terms of the Collective Investment Schemes Control Act[, 2002 (Act No. 45 of 2002)]; or”;

(b) by the substitution in subsection (1) in paragraph (i) of the proviso to the definition of “group of companies” for subparagraph (bb) of the following subparagraph:

“(bb) that company is a non-profit company as defined in section 1 of the Companies Act[, 2008 (Act No. 71 of 2008)];”;

(c) by the deletion in subsection (1) after paragraph (i)(dd) of the proviso to the definition of “group of companies” of the word “or”;

(d) by the substitution in subsection (1) after paragraph (i)(ee) of the proviso to the definition of “group of companies” for the word “and” of the word “or”;

(e) by the addition in subsection (1) to paragraph (i) of the proviso to the definition of “group of companies” after subparagraph (ee) of the following subparagraph:

“(ff) that company has its place of effective management outside the Republic; and”;

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

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

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

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

(h) by the substitution in subsection (4)(a)(i) for item (aa) of the following item:

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“(aa) section 80(2) of the Companies Act[, 2008 (Act No. 71 of 2008),] in the case of a company to which that section applies;”;

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

“(i) to the Companies and Intellectual Property Commission in terms of section 82(3)(b)(ii) of the Companies Act[, 2008,] in the case of a company to which that section applies; or”;  
and

(j) by the deletion of subsection (8).

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2014.

(3) Paragraphs (c), (d), (e), (f) and (j) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(4) Paragraph (g) of subsection (1) comes into operation on 1 January 2014 and applies in respect of acquisitions made on or after that date.

(5) Paragraphs (h) and (i) of subsection (1) come into operation on 1 January 2014.

**Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009, section 62 of Act 7 of 2010, section 68 of Act 24 of 2011 and section 74 of Act 22 of 2012**

97. (1) Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(a)(i) for item (bb) of the following item:

“(bb) in the case of an asset-for-share transaction contemplated in paragraph (b) of the definition of “asset-for-share transaction”, for an amount equal to the **[amount contemplated in subparagraph (i) or (ii) of that paragraph, as the case may be]** base cost of that asset as at the date of that disposal; and”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

**Amendment of section 43 of Act 58 of 1962, as inserted by section 75 of Act 22 of 2012**

# DRAFT

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

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

“**‘equity share’** includes a **[property]** linked **[unit]** debenture”;

(b) by the deletion in section (1) of the definition of “property linked unit”;

(c) by the substitution in section (1) in the definition of “substitutive share-for-share transaction” for paragraph (a) of the following paragraph:

“(a) that person[—] disposes of an equity share interest in that company and acquires another equity share interest in that company; and”;

(d) by the deletion in section (1) in paragraph (a) of the definition of “substitutive share-for-share transaction” of subparagraphs (i) and (ii);

(e) by the insertion in subsection (1) after the definition of “equity share interest” of the following definition:

“**‘linked debenture’** means a debenture that is or was part of a unit that consists of a share and a debenture in a REIT or a controlled company as defined in section 25BB, where that share and that debenture are linked together and are traded together as a single unit;”;

(f) by the addition after subsection (1) of the following subsection:

“(1A) Where a person disposes of a share interest in a company that comprises a pre-valuation date asset and acquires another share interest in that company in terms of a substitutive share-for-share transaction, that person must, for the purposes of determining the date of acquisition of that share interest and the expenditure in respect of the cost of acquisition of that share interest, be treated as having—

(a) disposed of that share interest at a time immediately before that substitutive share-for-share transaction, for an amount equal to the market value of that share interest at that time; and

(b) immediately reacquired that share interest at that time at an expenditure equal to that market value—

(i) less any capital gain, and

(ii) increased by any capital loss,

that would have been determined had the share interest been disposed of at market value at that time,

which expenditure must be treated as an amount of expenditure actually incurred at that time for the purposes of paragraph 20(1)(a).”;

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

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“(i) an expenditure actually incurred [**and paid**] by that person in respect of the share interest so acquired for the purposes of paragraph 20 of the Eighth Schedule, if the share interest so acquired is acquired as a capital asset; or”;

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

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

“(ii) that person becomes entitled, in exchange for that share interest, to any consideration other than another share interest that is acquired by that person in terms of that substitutive share-for-share transaction or a dividend or foreign dividend.”.

(2) Paragraphs (a), (b), (e) and (g) of subsection (1) are deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

(3) Paragraphs (c), (d), (f), (h) and (i) of subsection (1) is deemed to come into operation on 1 July 2013 and applies in respect of transactions entered into on or after that date.

**Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, section 50 of Act 60 of 2008, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010, section 69 of Act 24 of 2011 and section and section 76 of Act 22 of 2012**

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

(a) by the substitution in subsection (1) in paragraph (b) of the definition of “amalgamation transaction” for subparagraph (ii) of the following subparagraph:

“(ii) if, immediately before that transaction, any shares in that amalgamated company [**that are directly or indirectly held by that resultant company**] are held as capital assets; 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)](a)(ii) of the definition of ‘amalgamation transaction’ in subsection (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.”; and

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

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“(6)(a) This subsection applies where any person that holds an equity share in an amalgamated company acquires an equity share in the resultant company by virtue of that shareholding and pursuant to an amalgamation transaction in respect of which subsection (2) or (3) applied—

- (i) as either a capital asset or trading stock, in the case where that equity share in the amalgamated company is held as a capital asset; or
- (ii) as trading stock in the case where that equity share in the amalgamated company is held as trading stock.

(b) The person contemplated in paragraph (a) is deemed, subject to paragraphs (d) and (e), to have—

- (i) disposed of the equity share in that amalgamated company for an amount equal to the expenditure incurred by that person in respect of that equity share which is or was allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be ;
- (ii) acquired the equity share in the resultant company on the date on which that person acquired the equity share in the amalgamated company for a cost equal to the expenditure incurred by that person as contemplated in subparagraph (i);
- (iii) incurred the cost contemplated in subparagraph (ii) on the date on which that person incurred the expenditure in respect of the equity share in the amalgamated company, which cost must be treated as—

(aa) an expenditure actually incurred by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule, if those equity shares in the resultant company are acquired as capital assets; or

(bb) the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11 (a) or 22 (1) or (2), if those equity shares in the resultant company are acquired as trading stock; and

- (iv) done any valuation of the equity share in the amalgamated company which was done by that person within the period contemplated in paragraph 29 (4) of the Eighth Schedule, in respect of the equity share in the resultant company.

(c) An equity share in the resultant company that is acquired by the person contemplated in paragraph (a) is deemed not to be an amount transferred or applied by the amalgamated company for the benefit or on behalf of that person in respect of the share held by that person in that amalgamated company.

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(d) Where the person contemplated in paragraph (a) becomes entitled to any consideration other than any equity share in the resultant company, the provisions of paragraph (b) will not apply in respect of the part of the equity share held by that person in the amalgamated company which bears the same ratio to that share as the amount of that other consideration bears to the amount of the full consideration in respect of that share.

(e) Where the person contemplated in paragraph (a) becomes entitled, by virtue of the equity share held by that person in the amalgamated company, to any consideration other than any equity share in the resultant company, so much of the amount of that other consideration as does not exceed the market value of all the assets of the amalgamated company immediately before the amalgamation, conversion or merger less—

(i) the liabilities; and

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

of the amalgamated company immediately before the amalgamation, conversion or merger must, for the purposes of the definitions of “dividend”, “foreign dividend”, “foreign return of capital” and “return of capital” in section 1, be deemed to be an amount transferred by that amalgamated company for the benefit or on behalf of that person in respect of the share held by that person in the amalgamated company.”.

(d) by the deletion of subsection (7);

(e) by the deletion of subsection (10);

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

“(c) in respect of any transaction if the resultant company is a non-profit company as defined in section 1 of the Companies Act[, 2008 (Act No. 71 of 2008)];”.

(2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (c), (d) and (e) of subsection (1) are deemed to come into operation on 1 July 2013 and apply in respect of transactions entered into on or after that date.

(4) Paragraph (f) of subsection (1) comes into operation on 1 January 2014.

**Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008 and section 51 of Act 60 of 2008, section 64 of Act 7 of 2010, section 70 of Act 24 of 2011 and section 77 of Act 22 of 2012**

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

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(a) by the substitution in subsection (1) in paragraph (a) of the definition of “intra-group transaction” for subparagraph (i) of the following subparagraph:

“(i) in terms of which any asset is disposed of by one company (hereinafter referred to as the ‘transferor company’) to another company that is a resident (hereinafter referred to as the ‘transferee company’) and both companies form part of the same group of companies as at the end of the day of that transaction; and”;

(b) by the substitution in subsection (1) in paragraph (b)(iii) of the definition of “intra-group transaction” for items (bb) and (cc) of the following items:

“(bb) that transferor company is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies; and

(cc) that transferee company is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies.”;

(c) by the substitution in subsection (2)(a) for paragraph (B) of the proviso of the following paragraph:

“(B) that transferee company is a resident; and”;

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

“This subsection applies where an asset is acquired by a transferee company from a transferor company in terms of an intra-group transaction [**contemplated in paragraph (a) of the definition of “intragroup transaction”**] and—”; and

(e) by the substitution in subsection (4)(bA) for subparagraph (ii) of the following subparagraph:

“(ii) [**at the time of so ceasing, that transferee company**] has not disposed of that equity share at the time of so ceasing.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of transactions entered into on or after that date.

**Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007, section 29 of Act 3 of 2008, section 52 of Act 60 of 2008, section 65 of Act 7 of 2010, section 71 of Act 24 of 2011 and section 78 of Act 22 of 2012**

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

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

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“in terms of which **[all]** the equity shares **[of] in** a company (hereinafter referred to as the ‘unbundled company’), which is a resident that are held by a company (hereinafter referred to as the ‘unbundling company’), which is a resident, are all distributed by that unbundling company to any shareholder of that unbundling company in accordance with the effective interest of **[that shareholder] the shareholders** in the shares of that unbundling company, **[but only to the extent to which those equity shares are so distributed] and —**”;

(b) by the substitution in subsection (1)(a)(i) for items (aa), (bb) and (cc) of the following items:

“(aa) **[where that unbundling company is a listed company and] if all of** the equity shares of the unbundled company are listed shares or will become listed shares within 12 months after that distribution**[, to the shareholders of that unbundling company];**

(bb) where **[that unbundling company is an unlisted company, to any] that shareholder to which that distribution is made [of] by** that unbundling company **[that]** forms part of the same group of companies as that unbundling company; or

(cc) if that distribution is made pursuant to an order in terms of the Competition Act, 1998 (Act No. 89 of 1998), made by the Competition Tribunal or the Competition Appeal Court**[, to the shareholders of that unbundling company]; and**”;

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

“in terms of which all the equity shares **[of] in** an unbundled company which is a foreign company that are held by an unbundling company which is a resident or a controlled foreign company are all distributed by that unbundling company to any shareholder of that unbundling company in accordance with the effective interest of that shareholder in the shares of that unbundling company**[, but only to the extent to which those equity shares are so distributed to any shareholder of that unbundling company which]—**”;

(d) by the substitution in subsection (1)(b)(i) for items (aa) and (bb) of the following items:

“(aa) if that shareholder is a resident, that shareholder forms part of the same group of companies (as defined in section 1); or

(bb) if that shareholder is not a resident, that shareholder is a controlled foreign company in relation to any resident that forms part of the same group of companies (as defined in section 1),”;

(e) by the insertion in subsection (1)(b)(ii) at the end of item (aa) of the phrase “and”;

(f) by the substitution in subsection (1)(b)(ii) at the end of item (bb) for a semi-colon of a full stop;

(g) by the deletion in subsection (1)(b)(ii) of item (cc);

(h) by the substitution in subsection (1)(b)(ii)(bb) for a semi-colon of a full stop;



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(i) by the deletion in subsection (1)(b) of subparagraph (iii);

(j) by the addition of subsection (5) of the following subsection:

“(5A) Where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction, paragraph 76B of the Eighth Schedule does not apply to that distribution.”;

(k) by the substitution in subsection (7) for paragraph (a) of the following paragraph:

“(7) (a) [This] In the case of an unbundling transaction contemplated in subsection (1)(a)(i), this section does not apply if[,] immediately after any distribution of shares in terms of an unbundling transaction[,] 20 per cent or more of the shares in the unbundled company are held by a disqualified person either alone or together with any connected person (who is a disqualified person) in relation to that disqualified person.”; and

(l) by the substitution in subsection (7)(b) for subparagraph (i) of the following subparagraph:

“(i) a person that is not a resident [, **unless that person is a controlled foreign company and more than 50 per cent of the equity shares in that controlled foreign company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident)**];”.

(2) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) and (k) of subsection (1) come into operation on 1 July 2014 and applies in respect of unbundling transactions entered into on or after that date.

(3) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of distributions made on or after that date.

**Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008, section 53 of Act 60 of 2008, section 50 of Act 17 of 2009, section 66 of Act 7 of 2010, section 72 of Act 24 of 2011 and section 79 of Act 22 of 2012**

**102.** (1) Section 47 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (6) of paragraph (bA).

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of transactions entered into on or after that date.

## **Substitution of Part IVA of Chapter II of Act 58 of 1962**

**103.** (1) The Income Tax Act, 1962, is hereby amended by the substitution in Chapter II for Part IVA of the following part:

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## “Part IVA

### Withholding tax on interest

#### **Definitions**

**49A.** (1) In this Part—

**‘bank’** means any—

(a) bank as defined in section 1 of the Banks Act;

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

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

**‘Development Bank of Southern Africa’** means the Development Bank of Southern Africa Limited, incorporated in terms of the Development Bank of Southern Africa Act, 1997 (Act No. 13 of 1997);

**‘foreign person’** means any person that is not a resident;

**‘Industrial Development Corporation’** means the Industrial Development Corporation of South Africa Limited, registered in terms of the Industrial Development Corporation Act, 1940 (Act No. 22 of 1940); and

**‘listed debt’** means any debt that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule.

#### **Levy of withholding tax on interest**

**49B.** (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on interest, calculated at the rate of 15 per cent of the amount of any interest that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within the Republic in terms of section 9(2)(b).

(2) For the purposes of this Part, interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable.

(3) The withholding tax on interest is a final tax.

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(4) Where a person making payment of any amount of interest to or for the benefit of a foreign person has withheld an amount as contemplated in section 49E(1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

## **Liability for tax**

**49C.** (1) A foreign person to which an amount of interest is paid is liable for the withholding tax on interest to the extent that the interest is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(b).

(2) Where any amount of withholding tax on interest is—

(a) withheld as contemplated in section 49E(1); and

(b) paid as contemplated in section 49F(2),

that amount of withholding tax on interest must be regarded as an amount that is paid in respect of that foreign person's liability under subsection (1).

## **Exemption from withholding tax on interest**

**49D.** (1) Subject to subsection (2), there must be exempt from the withholding tax on interest any amount of interest—

(a) if that amount of interest is paid to any foreign person—

(i) by—

(aa) the government of the Republic in the national, provincial or local sphere;

(bb) any bank, the South African Reserve Bank, the Development Bank of Southern Africa or the Industrial Development Corporation; or

(cc) a headquarter company in respect of the granting of financial assistance as defined in section 31(1) to which section 31 does not apply as a result of the exclusions contained in section 31(5)(a) or (b); or

(ii) in respect of any listed debt; or

(b) payable as contemplated in section 27(6) of the Securities Services Act to any foreign person that is a client as defined in section 1 of that Act.

(2) Interest paid to a foreign person in respect of any amount advanced by the foreign person to a bank is not exempt from the withholding tax on interest if the amount is advanced in the course of any arrangement, transaction, operation or scheme to which the foreign person

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and any other person are parties and in terms of which the bank advances any amount to that other person on the strength of the amount advanced by the foreign person to the bank.

(3) A foreign person is exempt from the withholding tax on interest if—

(a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is paid; or

(b) the debt claim in respect of which that interest is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act.

## **Withholding of withholding tax on interest by payers of interest**

49E. (1) Subject to subsections (2) and (3), any person who makes payment of any amount of interest to or for the benefit of a foreign person must withhold an amount of withholding tax on interest from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection (1)—

(a) to the extent that the interest is exempt from the withholding tax on interest in terms of section 49D(1); or

(b) if the foreign person to or for the benefit of which that payment is to be made has—

(i) by a date determined by the person making the payment; or

(ii) if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D(3), exempt from the withholding tax on interest in respect of that payment.

(3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has—

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,

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submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation.

## **Payment and recovery of tax**

**49F.** (1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on interest in respect of any amount of interest that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the interest is paid, unless the tax has been paid by any other person.

(2) Any person that withholds any withholding tax on interest in terms of section 49E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the interest is paid.

## **Refund of withholding tax on interest**

**49G.** Notwithstanding Chapter 13 of the Tax Administration Act, if—

- (a) an amount is withheld from a payment of an amount of interest as contemplated in section 49E(1);
- (b) a declaration contemplated in section 49E(2)(b) or (3) in respect of that interest is not submitted to the person paying that interest by the date of the payment of that interest; and
- (c) a declaration contemplated in section 49E(2)(b) or (3) is submitted to the Commissioner within three years after the payment of the interest in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the interest was paid.

## **Currency of payments made to Commissioner**

**49H.** If an amount withheld by a person in terms of section 49E(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the

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purposes of determining the amount to be paid to the Commissioner in terms of section 49F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.”.

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of interest received or accrued on or after that date.

## **Insertion of Part IVB in Chapter II of Act 58 of 1962**

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

### “PART IVB

#### Withholding tax on royalties

#### **Definitions**

**50A.** In this Part—

**‘foreign person’** means any person that is not a resident; and

**‘royalty’** means any amount that is received or accrues in respect of—

(a) the use or right of use of or permission to use any intellectual property as defined in section 23I; or

(b) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information, unless the amount so received or accrued is attributable to a permanent establishment which is situated outside the Republic.

#### **Levy of withholding tax on royalties**

**50B.** (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated at the rate of 15 per cent of the amount of any royalty that is paid by any person to or for the benefit of any foreign person to the extent

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that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).

(2) For the purposes of this Part, a royalty is deemed to be paid on the earlier of the date on which the royalty is paid or becomes due and payable.

(3) The withholding tax on royalties is a final tax.

(4) Where a person making payment of a royalty to or for the benefit of a foreign person has withheld an amount as contemplated in section 50E(1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

## **Liability for tax**

**50C.** (1) A foreign person to which a royalty is paid is liable for the withholding tax on royalties to the extent that the royalty is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).

(2) Any amount of withholding tax on royalties that is—

(a) withheld as contemplated in section 50E(1); and

(b) paid as contemplated in section 50F(1),

is a payment made on behalf of the foreign person to which the royalty is paid in respect of that foreign person's liability under subsection (1).

## **Exemption from withholding tax on royalties**

**50D.** A foreign person is exempt from the withholding tax on royalties if—

(a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the royalty is paid;

(b) the property in respect of which that royalty is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act; or

(c) that royalty is paid by a headquarter company in respect of the granting of the use, right of use or permission to use intellectual property as defined in section 23I to which section 31 does not apply as a result of the exclusions contained in section 31(5)(c) or (d).

## **Withholding of withholding tax on royalties by payers of royalties**

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**50E.** (1) Subject to subsections (2) and (3), any person making payment of any royalty to or for the benefit of a foreign person must withhold an amount of withholding tax on royalties from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection (1) if the foreign person to or for the benefit of which that payment is to be made has—

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph

(a), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 50D, exempt from the withholding tax on royalties in respect of that payment.

(3) The rate referred to in section 50B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has—

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph

(a), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the royalty is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation.

## **Payment and recovery of tax**

**50F.** (1) If, in terms of section 50C, a foreign person is liable for any amount of withholding tax on royalties in respect of any royalty that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person.

(2) Any person that withholds any withholding tax on royalties in terms of section 50E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the royalty is paid.

## **Refund of withholding tax on royalties**



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**50G.** Notwithstanding Chapter 13 of the Tax Administration Act, if—

- (a) an amount is withheld from a payment of a royalty as contemplated in section 50E(1);
- (b) a declaration contemplated in section 50E(2) or (3) in respect of that royalty is not submitted to the person paying that royalty by the date of the payment of that royalty; and
- (c) a declaration contemplated in section 50E(2) or (3) is submitted to the Commissioner within three years after the payment of the royalty in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the royalty was paid.

## **Currency of payments made to Commissioner**

**50H.** If an amount withheld by a person in terms of section 50E is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 50F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.”.

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of royalties that are paid or become due and payable on or after that date.

## **Insertion of Part IVC in Chapter II of Act 58 of 1962**

**105.** (1) The Income Tax Act, 1962, is hereby amended by the insertion in Chapter II of the following part:

“PART IVC

Withholding tax on service fees

## **Definitions**

**51A.** In this Part—

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‘foreign person’ means any person that is not a resident; and

‘service fees’ means any amount that is received or accrued in respect of technical services, managerial services and consultancy services but does not include services incidental to the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information.

## Levy of withholding tax on service fees

51B. (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on service fees, calculated at the rate of 15 per cent of the amount of any service fee that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic.

(2) For the purposes of this Part, a service fee is deemed to be paid on the earlier of the date on which the service fee is paid or becomes due and payable.

(3) The withholding tax on service fees is a final tax.

(4) Where a person making payment of a service fee to or for the benefit of a foreign person has withheld an amount of withholding tax on service fees, that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

## Liability for tax

51C. (1) A foreign person to which a service fee is paid is liable for the withholding tax on service fees to the extent that the service fee is regarded as having been received by or accrued to that foreign person from a source within the Republic.

(2) Any amount of withholding tax on service fees that is—

(a) withheld as contemplated in section 51E(1); and

(b) paid as contemplated in section 51F(1),

is a payment made on behalf of the foreign person to which the service fee is paid in respect of that foreign person’s liability under subsection (1).

## Exemption from withholding tax on service fees

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51D. (1) A foreign person is exempt from the withholding tax on service fees if—

- (a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the service fee is paid;
- (b) the service in respect of which that service fee is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act; or
- (c) that service fee constitutes remuneration paid by an employer to an employee.

(2) For the purposes of this section—

‘employee’ means an employee as defined in paragraph 1 of the Fourth Schedule;

‘employer’ means an employer as defined in paragraph 1 of the Fourth Schedule; and

‘remuneration’ means remuneration as defined in paragraph 1 of the Fourth Schedule.

## Withholding of withholding tax on service fees by payers of service fees

51E. (1) Subject to subsections (2) and (3), any person making payment of any service fee to or for the benefit of a foreign person must withhold an amount as contemplated in section 51B from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection

(1) if the foreign person to or for the benefit of which that payment is to be made has—

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 51D, exempt from the withholding tax on service fees in respect of that payment.

(3) The rate referred to in section 51B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has—

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,

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submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the service fee is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation.

## **Payment and recovery of tax**

**51F.** (1) If, in terms of section 51C, a foreign person is liable for any amount of withholding tax on service fees in respect of any service fee that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the service fee is paid, unless the tax has been paid by any other person.

(2) Any person that withholds any withholding tax on service fees in terms of section 51E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the service fee is paid.

## **Refund of withholding tax on service fees**

**51G.** Notwithstanding Chapter 13 of the Tax Administration Act, if—

- (a) an amount is withheld from a payment of a service fee as contemplated in section 51E(1);
- (b) a declaration contemplated in section 51E(2) or (3) in respect of that service fee is not submitted to the person paying that service fee by the date of the payment of that service fee; and
- (c) a declaration contemplated in section 51E(2) or (3) is submitted to the Commissioner within three years after the payment of the service fee in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the service fee was paid

## **Currency of payments made to Commissioner**

**51H.** If an amount withheld by a person in terms of section 51E is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 51F(2),

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be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.”.

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of service fees that are paid or become due and payable on or after that date.

**Amendment of section 64B of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 35 of Act 89 of 1969, section 20 of Act 52 of 1970, section 19 of Act 90 of 1972, section 41 of Act 85 of 1974, section 33 of Act 94 of 1983, section 7 of Act 108 of 1986, section 32 of Act 90 of 1988, section 34 of Act 113 of 1993, section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 85 of Act 35 of 2007, section 32 of Act 3 of 2008, section 55 of Act 60 of 2008, section 51 of Act 17 of 2009, section 68 of Act 7 of 2010 and section 81 of Act 22 of 2012**

**106.** (1) Section 64B of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (12).

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 64C of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977, section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1986, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007, section 33 of Act 3 of 2008, section 52 of Act 17 of 2009, section 69 of Act 7 of 2010, section 74 of Act 24 of 2011 and section 821 of Act 22 of 2012**

**107.** (1) Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “share incentive scheme” of the following paragraph:

“(b) held by a trustee for the benefit of such directors and employees under an employee share scheme as defined in section 95(1)(c) of the Companies Act[, 2008 (Act No. 71 of 2008)]; or”.

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(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of section 64D of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 70 of Act 7 of 2010 and section 75 of Act 24 of 2011**

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

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

“ paid by a foreign company [**that is not a resident**]—”; and

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

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

(b) authorised user as defined in section 1 of the Securities Services Act[, **2004**];

(c) approved nominee contemplated in section 36(2) of the Securities Services Act[, **2004**];”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014.

## **Amendment of section 64EB of Act 58 of 1962, as inserted by section 85 of Act 22 of 2012**

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

### **“Deemed [dividends] beneficial owner of a dividend”**

**64EB.** (1) For the purposes of this Part, where—

(a) a person that is [**a beneficial owner**] contemplated in section 64F(1) acquires the right to a dividend by way of cession; and

(b) that dividend is either announced or declared before that acquisition,

[**that dividend is deemed to be a dividend paid for the benefit of**] the person ceding that right is deemed to be the beneficial owner of that dividend: Provided that this subsection does not apply to any cession in respect of a share if [**the right to that dividend is ceded together with all of the rights attaching to that share**] the person to whom those rights are ceded holds all the rights attaching to the share after the cession.

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(2) For the purposes of this Part, where—

- (a) a person that is [**a beneficial owner**] contemplated in section 64F(1) borrows a share in a listed company from another person; and
- (b) a dividend is either announced or declared before that share is borrowed,  
**[so much of any amount paid by the person in respect of that borrowed share as does not exceed the amount of the dividend is deemed to be a dividend paid for the benefit of that other person]** that other person is deemed to have received a dividend equal to the amount paid by the borrower to the lender.

(3) For the purposes of this Part, where—

- (a) a person that is [**a beneficial owner**] contemplated in section 64F acquires a share in a listed company (or any right in respect of that share) from another person after a dividend is announced or declared in respect of that share; and
- (b) that acquisition is part of [**an arrangement in terms of which that share or a share of the same kind or of the same or equivalent quality must be disposed of to**] a resale agreement between the person acquiring that share and that other person or any other company forming part of the same group of companies as that other person,  
**[that dividend is deemed to be a dividend paid to that other person.]** that other person or other company is deemed to be the beneficial owner of that dividend.

(4) For the purposes of this section, ‘resale agreement’ means the acquisition of a share by any person subject to an agreement in terms of which that person undertakes to dispose of that share or any other share of the same kind and of the same or equivalent quality at a future date.’.

(2) Subsection (1) is deemed to have come into operation on 1 September 2012 and applies in respect of—

- (a) transactions entered into on or after that date; and
- (b) amounts paid on or after 1 October 2012 in respect of transactions entered into before 1 September 2012.

**Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 72 of Act 7 of 2010, section 78 of Act 24 of 2011 and section 86 of Act 22 of 2012**

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

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

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“(h) a **[shareholder]** holder of shares 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]** all holders of shares in that registered micro business during the year of assessment in which that dividend is paid does not exceed the amount of R200 000;”;

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

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

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 64G of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 73 of Act 7 of 2010, section 80 of Act 24 of 2011 and section 88 of Act 22 of 2012**

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

“(1) Subject to subsections (2) and (3), a company that declares and pays a dividend must[,]  
withhold an amount of dividends tax from that payment calculated as contemplated in section 64E except to the extent that—

(a) the dividend **[does not consist]** consists of a distribution of an asset in specie; **[and] or**

(b) the dividend is not subject to the dividends tax by virtue of any STC credit contemplated in section 64J having been applied[,

**withhold an amount of dividends tax from that payment calculated as contemplated in section 64E].”.**

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

## **Amendment of section 64H of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 74 of Act 7 of 2010, section 81 of Act 24 of 2011 and section 89 of Act 22 of 2012**

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



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“(1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend that was declared by any other person must[,] withhold an amount of dividends tax from that payment calculated as contemplated in section 64E except to the extent that—

- (a) the dividend **[does not consist]** consists of a distribution of an asset in specie; **[and]** or
- (b) the dividend is not subject to the dividends tax by virtue of any STC credit contemplated in section 64J having been applied[,]

**withhold an amount of dividends tax from that payment calculated as contemplated in section 64E].”.**

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

## **Amendment of section 64J of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 83 of Act 24 of 2011 and section 90 of Act 22 of 2012**

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

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

“(b) the dividends accrued to that company on or after the effective date—

- (i) **[to the extent that]** in respect of which the company received a notification from the person paying the dividend of the amount by which the dividend reduces the STC credit of the company that paid and declared that dividend; and
- (ii) if the notification contemplated in subparagraph (i) was received no later than the date that the dividend is paid,

reduced by the dividends declared and paid by the company on or after the effective date.”;

and

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

“(3) For purposes of subsections (1)(b) and (2)(b), the amount by which the STC credit of a company is reduced is deemed to be equal to an amount which bears to the dividend paid by that company to the person or company contemplated in those subsections the same ratio as the amount by which the STC credit of that company is reduced as a result of the payment of that dividend to all **[shareholders]** holders of shares in that company bears to the total dividend paid to all **[shareholders]** holders of shares.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 11 of First Schedule to Act 58 of 1962, as substituted by section 44 of Act 113 of 1993 and amended by section 32 of Act 36 of 1996, section 41 of Act 53 of 1999 and section 77 of Act 7 of 2010**

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

“(iii) where the farmer is a company, has on or after 21 June 1993 been distributed *in specie* to a **[shareholder of]** holder of a share in such company; or”.

(2) Subsection (1) comes into operation on 1 January 2014.

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

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

“(4)(a) For the purposes of this paragraph ‘**employees**’, in relation to any farmer, means persons employed by that farmer in connection with his or her farming operations, but does not include his or her relatives or, where the farmer is a company, the **[shareholders]** holders of shares (or the relatives of **[shareholders]** holders of shares) in that company or in any company which is associated with it by virtue of **[shareholding]** the holding of shares.

(b) For the purposes of item (a) [**shareholders**] ‘**holders of shares**’ in relation to any company does not include persons who hold all their shares in that company solely because they are employed by that company and who will, in terms of the articles of association of that company, not be entitled to hold those shares after they cease to be so employed.”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of paragraph 2C of Second Schedule to Act 58 of 1962, as inserted by section 49 of Act 8 of 2007 and amended by section 39 of Act 3 of 2008, section 61 of Act 60 of 2008 and section 90 of Act 24 of 2011**

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

“2C. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person’s retirement or death, or withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event that is prescribed by the Minister by notice in the *Gazette* and contemplated by the rules of any such fund or the approval of a scheme in terms of section 15B of the Pension Funds Act[, 1956 (Act

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No. 24 of 1956),] or paragraph 5.3(1)(b) of the Schedule which amends regulation 30 of the Regulations under the [Long-Term] Long-term Insurance Act[, 1998 (Act No. 52 of 1998),] shall not constitute gross income of that person.”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 5 of Second Schedule to Act 58 of 1962, as substituted by section 61 of Act 17 of 2009 and amended by section 98 of Act 22 of 2012**

**117.** (1) Paragraph 5 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item:

“(a) the person’s own contributions that did not rank for a deduction against the person’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;”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts received or accrued on or after that date.

## **Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009 and amended by section 84 of Act 7 of 2010, section 92 of Act 24 of 2011 and section 99 of Act 22 of 2012**

**118.** (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—  
(a) by the substitution in subparagraph (1) for item (a) of the following item:

“(a) in the case of[—

(i) a lump sum benefit contemplated in paragraph 2(1)(b)(iA) and (iB), so much of the benefit as is paid or transferred for the benefit of the person from a—

[(aa)](i) pension fund, pension preservation fund, provident fund or provident preservation fund into any pension fund, pension preservation fund,

provident fund, provident preservation fund or retirement annuity fund; or

[(bb) **pension preservation fund into any pension fund, pension preservation fund or retirement annuity fund;**

(cc) **provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;**

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- (dd) provident preservation fund into any pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and**
- (ee)](ii) 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 person from a—**
  - (aa) pension fund into any pension fund, pension preservation fund or retirement annuity fund;**
  - (bb) pension preservation fund into any pension fund, pension preservation fund or retirement annuity fund;**
  - (cc) provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;**
  - (dd) provident preservation fund into any pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and**
  - (ee) retirement annuity fund into any retirement annuity fund; and]”.**

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

“(i) the person’s own contributions that did not rank for a deduction against the person’s income in terms of section 11(k) **[or (n)]** to 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;” and

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

“(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the **[taxpayer] person** by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the person to any other such fund, or any amount paid by the person 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 person.”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 March 2015 and apply in respect of amounts received or accrued on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 March 2014.

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**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, section 17 of Act 18 of 2009, section 18 of Act 8 of 2010 and section 93 of Act 24 of 2011**

**119.** (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “personal service provider” for the words following subparagraph (c) of the following words:

“except where such company or trust throughout the year of assessment employs three or more full-time employees who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a **[shareholder] holder of a share in** or member of the company or trust or is a connected person in relation to such person;”.

(2) Subsection (1) comes into operation on 1 January 2014.

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

**120.** (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (4) for items (a), (b) and (bA) of the following items:

- “(a) any contribution by the employee concerned to any pension fund or provident 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) having regard to the remuneration and the period in respect of which it is payable;
- (b) at the option of the employer, any contribution to a retirement annuity fund by the employee in respect of which proof of payment has been furnished to the employer, but

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limited to the deduction to which the employee is entitled under section [11(n)] 11(k) having regard to the remuneration and the period in respect of which it is payable;

(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)] 11(k) having regard to the remuneration and the period in respect of which it is payable;”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts contributed on or after that date.

## **Amendment of paragraph 13 of Fourth Schedule to Act 58 of 1962, as amended by section 24 of Act 72 of 1963, section 29 of Act 113 of 1977, section 49 of Act 101 of 1990, section 23 of Act 19 of 2001 and section 21 of Act 4 of 2008**

121. (1) Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (12).

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

## **Amendment of paragraph 17 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 27 of Act 90 of 1964, section 4 of Act 88 of 1971, section 33 of Act 103 of 1976, section 30 of Act 104 of 1980, section 51 of Act 101 of 1990 and section 57 of Act 59 of 2000 and item 88 of Schedule 1 to Act 28 of 2011**

122. (1) Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

“(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement or **[as varied by the Minister under section 5(3) of this Act,]** to the rebates applicable in terms of section 6(2) **[and (3)(a) and section 6quat]** of this Act and **[to] taking into account** any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied together with the period for which such tables shall remain in force.”.

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

## **Amendment of paragraph 19 of 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**

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**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, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009, paragraph 90 of Schedule 1 to Act 28 of 2011 and section 22 of Act 21 of 2012**

- 123.** (1) Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion in subparagraph (1)(d)(i) after subsubitem (aa) of the word “and”;
  - (b) by the substitution in subparagraph (1)(d)(i) for subsubitem (bb) of the following sub-subitem:  
“(bb) the taxable portion of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, other than any amount included under paragraph (eA) of the definition of ‘gross income’ in section 1;”; and
  - (c) by the deletion in subparagraph (1)(d)(i) of subsubitem (cc).
- (2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962, as inserted by section 25 of Act 52 of 1970 and amended by section 45 of Act 88 of 1971, section 52 of Act 85 of 1974, section 40 of Act 121 of 1984, section 88 of Act 45 of 2003, item 92 of schedule 1 to Act 28 of 2011 and section 24 of Act 22 of 2012**

- 124.** (1) Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:
- “(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by that provisional taxpayer during any year of assessment and the estimate of the taxpayer’s taxable income for that year required to be submitted by the taxpayer under paragraph 19(1) during the period contemplated in paragraph 21(1)(b)[, **22(1)**] or 23(b), as the case may be, was not submitted by the taxpayer on or before the last day of that year the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the amount by which the normal tax payable by the taxpayer in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by the taxpayer in respect of such taxable income within any period allowed for the payment of such

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provisional tax under this Part and any amounts of employees' tax deducted or withheld from the taxpayer's remuneration by the taxpayer's employer during such year.”.

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

## **Amendment of paragraph 3 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 63 of Act 17 of 2009, section 86 of Act 7 of 2010 and section 97 of Act 24 of 2011**

**125.** (1) Paragraph 3 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(ii) at any time during its year of assessment, any holder of [**its shareholders**] shares in that micro business is a person other than a natural person (or the deceased or insolvent estate of a natural person);”; and

(b) by the substitution in subparagraph (f)(iii) for the words preceding the proviso of the following words:

“at any time during its year of assessment, any holder of [**its shareholders**] shares in that micro business holds any shares or has any interest in the equity of any other company other than a share or interest described in paragraph 4”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 7 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 89 of Act 7 of 2010**

**126.** (1) Paragraph 7 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) any amount exempt from normal tax in terms of section [**10(1)(y), 10(1)(zA), 10(1)(zG), and 10(1)(zH)**] 12P.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 10 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 100 of Act 24 of 2011**

**127.** (1) Paragraph 10 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:



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“(2) The Commissioner must, subject to subparagraph (3), deregister a registered micro business with effect from the beginning of the month following the month during which the event as described in subparagraph (1)(a) [,] or (1)(b) [**or (4)**] occurred.”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as amended by section 26 of Act 96 of 1985, section 33 of Act 65 of 1986, section 28 of Act 85 of 1987, section 24 of Act 70 of 1989, section 55 of Act 101 of 1990, section 49 of Act 129 of 1991, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000, section 59 of Act 59 of 2000, section 62 of Act 74 of 2002, section 47 of Act 3 of 2008, section 90 of Act 7 of 2010 and section 101 of Act 24 of 2011**

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

(a) by the insertion after the definition of “consideration” of the following definitions:

“ **‘defined benefit component’** means a component of a pension fund, provident fund or retirement annuity fund other than a defined contribution component of a fund;

**‘defined contribution component’** means a component of a pension fund, provident fund or retirement annuity fund in respect of which the benefit on retirement to an employee as a member of the fund has a value equal to the value of—

(a) the contributions paid by the member and by the employer in terms of the rules of the fund that determine the rates of both their contributions at a fixed rate;

(b) less such expenses as the board of that fund determines should be deducted from the contributions paid;

(c) plus any amount credited to the member’s individual account upon—

(i) the commencement of the member’s membership of the fund;

(ii) the conversion of the component of the fund to which the member belongs from a defined benefit component to a defined contribution component; or

(iii) the amalgamation of that fund with any other fund, if any,

other than amounts taken into account in terms of subparagraph (d);

(d) plus any other amounts lawfully permitted, credited to or debited from the member’s individual account, if any,

as increased or decreased by fund return: Provided that the board may elect to smooth the fund return;”;

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

“ **‘employee’**, in relation to any employer, means a person who is an employee in relation to such employer for the purposes of the Fourth Schedule, excluding any person who prior to 1

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March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, but including, in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole **[shareholder]** holder of shares in or one of the controlling **[shareholders]** holders of shares in such company and, for the purposes of paragraphs 2(h) and 13, including any person who has retired as aforesaid and who, after **[his]** the employee's retirement, is released by **[his]** the employee's employer from an obligation which arose before the employee's retirement to reimburse the employer for an amount paid by the employer on behalf of the employee or to pay any amount which became owing by the employee to the employer before the employee's retirement;";

(c) by the insertion after the definition of "official rate of interest" of the following definition:

“ **retirement-funding income** means—

- (a) in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law) who derives in respect of his or her employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule and who is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived, that part of the employee's said income as is taken into account in the determination of the contributions made by the employer for the benefit of the employee to such pension fund or provident fund in terms of the rules of the fund; or
- (b) in relation to a partner in a partnership (other than a partner contemplated in paragraph (a)) that part of the partner's income from the partnership in the form of the partner's share of profits as is taken into account in the determination of the contributions made by the partnership for the benefit of the partner to a pension fund or provident fund in terms of the rules of the fund: Provided that for the purposes of this definition a partner in a partnership must be deemed to be an employee of the partnership and a partnership is deemed to be the employer of the partners in that partnership;”.

(2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 March 2015 and apply in respect of contributions made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014.

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

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**of Act 31 of 2007, section 64 of Act 17 of 2009, section 102 of Act 24 of 2011 and section 100 of Act 22 of 2012**

**129.** (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (f) for the words preceding item (i) of the following words:

“a debt (other than a debt for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act[, **2008 (Act No. 71 of 2008),**] or the payment of any securities transfer tax payable in respect of that share, or a debt in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been incurred by the employee, whether in favour of the employer or in favour of any other person by arrangement with the employer or any associated institution in relation to the employer, and either—”;

(b) by the addition after paragraph (k) of the following paragraph:

“(l) the employer has during any period made any contribution for the benefit of any employee to any pension fund, provident fund or retirement annuity fund;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made on or after that date.

**Amendment of paragraph 5 of Seventh Schedule to Act 58 of 1962, as amended by section 28 of Act 96 of 1985, section 57 of Act 101 of 1990, by section 31 of Act 21 of 1994, section 46 of Act 21 of 1995 and section 35 of Act 30 of 2002**

**130.** (1) Paragraph 5 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (3) of the following subparagraph:

“(3A) No value shall be placed under this paragraph on any immovable property acquired by an employee as contemplated in paragraph 2(a): Provided that this subparagraph must not apply unless—

(a) the remuneration factor of the employee is R200 000 or less in relation to the year of assessment during which the immovable property is so acquired; and

(b) the cost of the immovable property to the employer is R350 000 or less.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of acquisitions made on or after that date.

**Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986,**

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**Government Notice 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999 and section 56 of Act 31 of 2005, section 91 of Act 7 of 2010 and section 103 of Act 24 of 2011**

**131.** (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(b) for the words following sub-item (ii) of the following words:

“the retail market value thereof at the time the employer first obtained the right of use of the vehicle or, where at such time such lease was a lease contemplated in paragraph (b) of the definition of “instalment credit agreement” in section 1 of the Value-Added Tax Act[, 1991 (Act No. 89 of 1991)], the cash value thereof as contemplated in the definition of “cash value” in the said section; or”.

(2) Subsection (1) comes into operation on 1 January 2014.

**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 2 of Act 8 of 2007, section 68 of Act 35 of 2007, sections 1 and 48 of Act 3 of 2008, section 65 of Act 17 of 2009 and section 104 of Act 24 of 2011**

**132.** (1) Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (b) of the definition of “remuneration” of the following item:

“(b) the amount of any remuneration derived by any employee who is not the controlling **[shareholder]** holder of shares or one of the controlling **[shareholders]** holders of shares of the employer company, from an associated institution in relation to the employer if it is shown to the satisfaction of the Commissioner that the employee’s employment with the employer is not and was not in any way connected with the employee’s employment with such associated institution (any decision of the Commissioner under this paragraph being subject to objection and appeal); **[and]**”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of paragraph 12A of the 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, section 2 of Act 80 of 2007,**

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**section 1 of Act 3 of 2008, section 66 of Act 17 of 2009, section 105 of Act 24 of 2011 and section 271 read with paragraph 103 of Schedule to Act 28 of 2011**

**133.** (1) Paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(i) is the amount of any contribution or payment made by the employer 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.”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of paragraph 12B of Seventh Schedule to Act 58 of 1962, as inserted by section 60 of Act 31 of 2005 and amended by section 31 of Act 9 of 2006 and section 70 of Act 35 of 2007**

**134.** (1) Paragraph 12B of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

“resulting from the provision of medical treatment listed in any category of the prescribed minimum benefits determined by the Minister of Health in terms of section 67(1)(g) of the Medical Schemes Act[, 1998 (Act No. 131 of 1998),] which is provided to the employee or his or her spouse or children in terms of a scheme or programme of that employer—”; and

(b) by the substitution in subparagraph (3)(a)(ii) for subsubitem (aa) of the following subsubitem:

“(aa) are not beneficiaries of a medical scheme registered under the Medical Schemes Act[, 1998 (Act No. 131 of 1998)]; or”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of paragraph 12C of Seventh Schedule to Act 58 of 1962, as inserted by section 106 of Act 24 of 2011**

**135.** (1) Paragraph 12C of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (2).

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of premiums paid on or after that date.

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## Insertion of paragraph 12D in Seventh Schedule to Act 58 of 1962

136. (1) The Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 12C of the following paragraph:

“12D. (1) The cash equivalent of the value of the benefit contemplated in paragraph 2(l) is the aggregate amount of the value of the contributions paid by the employer in respect of a defined contribution component and a defined benefit component of a fund in respect of an employee that is a member of that fund.

(2) The value of any contribution paid by an employer in respect of the defined contribution component of a fund in respect of an employee is the amount determined by the valuator of that fund in the manner prescribed by the Minister in terms of subparagraph (4).

(3) The value of any contribution paid by an employer to fund the defined benefit component of a fund in respect of an employee that is a member of that fund is the amount determined in accordance with the following formula:

$$X = Y \times ((A \times F) + L),$$

in which formula—

‘X’ represents the amount to be determined;

‘Y’ represents the retirement-funding income of the employee;

‘A’ represents the annuity accrual rate of the employee;

‘L’ represents the lump sum accrual rate of the employee; and

‘F’ represents the fund factor,

determined by the valuator of that fund in the manner prescribed by the Minister in terms of subparagraph (4).

(4) The Minister must prescribe by regulation the manner in which the valuator of a fund must determine—

(a) the defined contribution component of a fund, as contemplated in subparagraph (2);

(b) the defined benefit component of a fund, as contemplated in subparagraph (3);

(c) the annuity accrual rate of the fund, as contemplated in symbol ‘A’ of the formula in subparagraph (3);

(d) the lump sum accrual rate, as contemplated in symbol ‘L’ of the formula in subparagraph (3);

(e) the fund factor, as contemplated in symbol ‘F’ of the formula in subparagraph (3).

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(5) For the purposes of this paragraph any contribution or payment made by an employer to a pension fund, provident fund or retirement annuity fund in respect of an insurance policy held by the fund directly or indirectly for the benefit of an employee that is a member of that fund is deemed to be a contribution made in respect of the defined contribution component of that fund.

(6) No value shall be placed in terms of this paragraph on the taxable benefit derived from any contribution made by an employer for the benefit of a member of a pension fund, provident fund or retirement annuity fund to that fund by a person who by reason of superannuation, ill-health or other infirmity retired from the employ of that employer.”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of contributions made on or after that date.

**Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005, section 44 of Act 20 of 2006, section 74 of Act 60 of 2008 and section 106 of Act 22 of 2012**

**137.** (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(e) the distribution of an asset by a company to a [**shareholder**] holder of shares.”;

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

“(ii) the granting of an option to acquire a share [**or member’s interest**] in or certificate acknowledging or creating a debt owed by that company.”;

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

“(b) by a company in respect of—

(i) the issue [**or cancellation**] of a share in the company; or

(ii) the granting of an option to acquire a share or certificate acknowledging or creating a debt owed by that company,

other than a share, option or certificate issued to any person by a company that is a resident in exchange, directly or indirectly, for shares in a foreign company.”; and

(d) by the substitution in item (k) for the full stop of a semi-colon;

(e) by the insertion in subparagraph (2) after item (k) of the following item:

“(l) where a company subdivides, consolidates or converts shares of par value to no par value or vice versa or converts shares in terms of section 40A or 40B solely in substitution of the shares held by a person and—

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(i) the proportionate participation rights and interests of that person in that company remain unaltered; and

(ii) no other consideration whatsoever passes directly or indirectly in consequence of that subdivision, consolidation or conversion.”;

(f) by the insertion after subparagraph (2) of the following paragraph:

“(3) The amount of the proceeds from the disposal of a share under circumstances contemplated in subparagraph (2)(b) by a company that is not a resident in exchange, directly or indirectly, for shares in a foreign company must be treated as an amount equal to the fair market value of the shares in the foreign company.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

(4) Paragraphs (c) and (f) of subsection (1) come into operation on 1 January 2014 and apply in respect of shares issued on or after that date.

(5) Paragraphs (d) and (e) of subsection (1) is deemed to come into operation on 1 July 2013 and applies in respect of transactions entered into on or after that date.

## **Amendment of paragraph 12A of Eighth Schedule to Act 58 of 1962, as inserted by section 108 of Act 22 of 2012**

**138.** (1) Paragraph 12A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

**“Reduction [or cancellation] of debt”;**

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

“(ii) incurred in [**the acquisition, creation or improvement**] respect of an allowance asset; and”;

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

“(b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund expenditure incurred in [**the acquisition, creation or improvement**] respect of an asset that is held by that person at the time of the reduction of the debt.”;

(d) by the substitution in subparagraph (4)(b) for subitems (i) and (ii) of the following subitems:

“(i) expenditure incurred in [**the acquisition, creation or improvement**] respect of an asset (other than an allowance asset) that is held by that person at the time of the reduction of



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the debt, and subparagraph (3) has been applied to reduce any expenditure in respect of that asset to the full extent of that expenditure; or

- (ii) expenditure incurred in [**the acquisition, creation or improvement**] respect of an asset (other than an allowance asset) that is no longer held by that person at the time of the reduction of that debt,”;

(e) by the substitution in subparagraph (5) for the words preceding item (a) of the following words:

“Where subparagraph (3) or (4) applies in respect of a debt that was used to fund expenditure [**incurred**] in respect of a pre-valuation date asset of a person, for the purposes of determining the date of acquisition of that asset and the expenditure incurred in respect of [**the cost of acquisition, creation or improvement of**] that asset, that person must be treated as having—”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as amended by section 69 of Act 74 of 2002, section 57 of Act 32 of 2004, section 51 of Act 3 of 2008, section 76 of Act 60 of 2008, section 68 of Act 17 of 2009 and section 109 of Act 22 of 2012**

**139.** (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (e) of the following item:

“(e) the distribution of an asset by a company to a [**shareholder**] holder of shares, is the date on which that asset is so distributed as contemplated in paragraph 75;”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 16 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001**

**140.** (1) Paragraph 16 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (b) of the following item:

“(b) any patent as defined in the Patents Act[, **1978 (Act No. 57 of 1978)**,] or any design as defined in the Designs Act[, **1993 (Act No. 195 of 1993)**,] or any trade mark as defined in the Trade Marks Act[, **1993 (Act No. 194 of 1993)**,] or any copyright as defined in the Copyright Act[, **1978 (Act No. 98 of 1978)**,] any rights recognised under the Plant Breeders’ Rights Act, 1996 (Act No. 15 of 1996), or any model, pattern, plan, formula or process or any other property or right of a similar nature;”.

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(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007, section 52 of Act 3 of 2008, section 77 of Act 60 of 2008, section 95 of Act 7 of 2010, section 110 of Act 24 of 2011 and section 111 of Act 22 of 2012**

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

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

“(g) one-third of the interest as contemplated in section 24J excluding any interest contemplated in 24O on money borrowed to finance the expenditure contemplated in items (a) or (e) in respect of a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme (including money borrowed to refinance those borrowings).”;

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

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 31 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 83 of Act 60 of 2001, section 78 of Act 74 of 2002, section 49 of Act 20 of 2006, section 62 of Act 8 of 2007 and section 97 of Act 7 of 2010**

**142.** (1) Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“an asset which is a long-term insurance policy, being a policy as defined in section 1 of the Long-term Insurance Act[, 1998 (Act No. 52 of 1998),] the greater of—”

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

“(b) if upon the winding-up of the company that person would have been entitled to share in the assets of the company to a greater extent [**pro rata to shareholding than other shareholders**] that is not in proportion to that person’s holding of shares, the value of the shares held by that [**shareholder**] holder of shares must not be less than the amount to which that [**shareholder**] holder of shares would have been so entitled if the company

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had been in the course of winding-up and the said amount had been determined as at valuation date.”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 28 of Act 19 of 2001, section 84 of Act 60 of 2001, section 39 of Act 30 of 2002, section 79 of Act 74 of 2002 and section 113 of Act 22 of 2012**

**143.** (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3A)(b) for subitems (ii) and (iii) of the following subitems:

- “(ii) in any portfolio comprised in any collective investment scheme managed or carried on by a company registered as a manager under section 42 of the Collective Investment Schemes Control Act[, 2002,] for purposes of Parts IV and V of that Act; or
- (iii) in any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of “company” in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act[, 2002,] by the Registrar as defined in section 1 of the latter Act;”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 35 of Eighth Schedule to Act 58 of 1962, as amended by section 86 of Act 60 of 2001**

**144.** (1) Paragraph 35 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following paragraph:

“(1A) The amount of proceeds from the disposal of a share, option or certificate issued to any person by a resident company in exchange, directly or indirectly, for shares in a foreign company as contemplated in paragraph 11(3) must be treated as an amount equal to the fair market value of the shares in the foreign company.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of shares issued on or after that date.

## **Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001, section 81 of Act 74 of 2002, section 63 of Act 32 of 2004, section 72 of Act 31 of 2005 and section 98 of Act 7 of 2010**

**145.** (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (2) for the semi-colon at the end of item (c) for a full stop; and

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(b) by the deletion in subparagraph (2) of item (e).

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of acquisitions made on or after that date.

## **Repeal of paragraph 42A of Eighth Schedule to Act 58 of 1962**

**146.** (1) Paragraph 42A of the Eighth Schedule to the Income Tax Act, 1962, is hereby repealed.

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

## **Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002, section 101 of Act 45 of 2003, section 75 of Act 31 of 2005, section 51 of Act 33 of 2006, section 76 of Act 35 of 2007, section 100 of Act 7 of 2010, section 111 of Act 24 of 2011 and section 117 of Act 22 of 2012**

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

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

“(1) Where, during any year of assessment, a person that is a natural person or a trust that is not carrying on a trade disposes of an asset for proceeds in a foreign currency [**other than the currency of the Republic**] after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that currency and that capital gain or capital loss must be translated to the local currency [**of the Republic**] by applying the average exchange rate for the year of assessment in which that asset was disposed of or by applying the spot rate on the date of disposal of that asset.”;

(b) by the substitution for subparagraph (1A) of the following subparagraph:

“(1A) Where, during any year of assessment, a person [**that is a company or a trust carrying on a trade**] disposes of an asset (other than a disposal contemplated in subparagraph (1)) for proceeds in a foreign currency [**other than the currency of the Republic**] or after having incurred expenditure in respect of that asset in [**the same**] a foreign currency, that person must, for the purposes of determining the capital gain or capital loss on the disposal of that asset, translate—

(a) the proceeds into the local currency [**of the Republic**] at the average exchange rate for the year of assessment in which that asset was disposed of or at the spot rate on the date of disposal of that asset; and

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- (b) the expenditure incurred in respect of that asset into the local currency [**of the Republic**] at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate on the date on which that expenditure was incurred.”;
- (c) by the deletion of subparagraph (2);
- (d) by the deletion of subparagraph (5A);
- (e) by the substitution in subparagraph (6A) for the words preceding item (a) of the following words:  
“**[This paragraph] Subparagraph (1A)** must not apply in respect of the disposal by a person of—”;
- (f) by the deletion in subparagraph (6A) of item (a);
- (g) by the substitution in subparagraph (6A) for item (b) of the following item:  
“(b) any amount [**in any currency owing to that person in respect**] of a debt owed to that person denominated in a foreign currency; or”;
- (h) by the substitution in subparagraph (7) for item (b) of the definition of “local currency” of the following item:  
“(b) in relation to a headquarter company, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that headquarter company; or”;
- (i) by the substitution in subparagraph (7) for item (c) of the definition of “local currency” of the following item:  
“(c) in relation to a domestic treasury management company, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that domestic treasury management company; or”;
- (j) by the addition in subparagraph (7) of the definition of “local currency” after item (c) of the following item:  
“(d) in relation to an international shipping company defined in section 12Q, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that international shipping company; or”; and
- (k) by the addition in subparagraph (7) to the definition of “local currency” after item (c) of the following item:  
“(d) in any other case, the currency of the Republic.”.
- (2) Paragraphs (a), (b), (c), (d), (e) and (f) of subsection (1) are deemed to have come into operation on 1 March 2013 and apply in respect of disposals made on or after that date.
- (3) Paragraphs (g), (h), (i) and (k) of subsection (1) are deemed to have come into operation on 27 February 2013 and apply in respect of years of assessment commencing on or after that date.

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(4) Paragraph (j) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 53 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 97 of Act 60 of 2001**

**148.** (1) Paragraph 53 of the Eighth Schedule to the Income tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for items (g) and (h) of the following items:

“(g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the **[Short-Term] Short-term Insurance Act[, 1998 (Act No. 53 of 1998)]**;

(h) any short-term policy contemplated in the **[Short-Term] Short-term Insurance Act[, 1998,]** to the extent that it relates to any asset which is not a personal-use asset; and”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, substituted by section 99 of Act 60 of 2001 and amended by section 88 of Act 74 of 2002, section 65 of Act 32 of 2004 and section 119 of Act 22 of 2012**

**149.** (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2)(a) for subitems (i) and (ii) of the following subitems:

“(i) the **[base cost] expenditure in respect** of an asset of the debtor in terms of paragraph 12A;  
or

(ii) any **[aggregate] assessed** capital loss of the debtor in terms of paragraph 12A;”;

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

“(c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20(1)(a)**[(ii)]**; or”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962, as amended by section 89 of Act 74 of 2002, section 34 of Act 9 of 2006, section 115 of Act 24 of 2011 and section 11 of Act 13 of 2012**

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**150.** (1) Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The provisions of this paragraph do not apply where a person owns more than one business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, and the total market value of all assets in respect of all those businesses exceeds [**R5 million**] R10 million.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 57A of Eighth Schedule to Act 58 of 1962, as inserted by section 80 of Act 60 of 2008**

**151.** (1) Paragraph 57A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) any asset which constitutes immovable property [, **to the extent that it was**] mainly used for business purposes; and”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 61 of Eighth Schedule to Act 58 of 1962, as substituted by section 75 of Act 17 of 2009 and amended by section 106 of Act 7 of 2010 and section 120 of Act 22 of 2012**

**152.** (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1958, is hereby amended—  
(a) by the deletion of paragraphs (1) and (2); and

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

“(3) Any capital gain or capital loss in respect of a disposal by a portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property, must be disregarded.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies for years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2015 and applies for years of assessment commencing on or after that date.

## **Amendment of paragraph 62 of Eighth Schedule to Act 58 of 1962, as substituted by section 103 of Act 45 of 2003 and amended by section 52 of Act 20 of 2006 and section 107 of Act 7 of 2010**

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**153.** (1) Paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (c) of the following subparagraph:

“(c) a person [**approved by the Commissioner in terms of**] contemplated in section 10(1)(cA) or (d)(iv)”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of donations or bequests made on or after that date.

## **Amendment of paragraph 64 of Eighth Schedule to Act 58 of 1962, as substituted by section 78 of Act 31 of 2005 and amended by section 54 of Act 20 of 2006 and section 76 of Act 17 of 2009**

**154.** (1) Paragraph 64 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—  
(a) by the substitution for subparagraph (a) of the following subparagraph:

“(a) section 10, other than receipts or accruals contemplated in paragraphs (cN), (cO), (i)[(xv)], (k) and (m) of subsection (1) thereof; or”;

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

“(a) section 10, other than receipts and accruals contemplated in paragraphs (cN), (cO), (i)[,] and (k) [**and** (m)] of subsection (1) thereof; or”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2013.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 45 of 2003 and amended by section 79 of Act 31 of 2005, section 35 of Act 9 of 2006, section 65 of Act 8 of 2007, section 77 of Act 35 of 2007, section 58 of Act 3 of 2008, section 81 of Act 60 of 2008, section 108 of Act 7 of 2010, section 116 of Act 24 of 2011 and section 122 of Act 22 of 2012**

**155.** (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3)(c)(ii) for subsubitem (bb) of the following subsubitem:

“(bb) the full amount of that distribution was included in the income of a [**shareholder**] holder of shares in that foreign company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; or”;

(b) by the substitution in subparagraph (3)(c)(iii)(bb) for unit (B) of the following unit:

“(B) was included in the income of a [**shareholder**] holder of shares in that company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; and”;



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(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2014.

## **Amendment of paragraph 67C of Eighth Schedule to Act 58 of 1962, as inserted by section 111 of Act 45 of 2003 and amended by section 28 of Act 16 of 2004**

**156.** (1) Paragraph 67C of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs:

- “(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act[, 2002 (Act No. 28 of 2002),] wholly or partially continues in force or is wholly or partially converted into a new right pursuant to the same Schedule; or
- (b) any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit[,] as defined in section 1 of the Mineral and Petroleum Resources Development Act[, 2002 (Act No. 28 of 2002),] is wholly or partially renewed in terms of that Act.”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 68 of Eighth Schedule to Act 58 of 1962**

**157.** (1) Paragraph 68 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (b) of the following item:

- “(b) that person’s spouse or any partnership or private company at a time when that spouse was a member of that partnership or the sole, main or one of the principal **[shareholders of] holders of shares in** that company.”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **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, section 29 of Act 16 of 2004, section 79 of Act 17 of 2009, section 118 of Act 24 of 2011 and section 131 of Act 22 of 2012**

**158.** (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item:

- “(a) that company must be treated as having disposed of that asset to that **[shareholder] person** on the date of distribution for an amount received or accrued equal to the market value of that asset on that date; and”.

(2) Subsection (1) comes into operation on 1 January 2014.

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**Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act 16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007, section 60 of Act 3 of 2008, section 84 of Act 60 of 2008, section 119 of Act 24 of 2011 and section 132 of Act 22 of 2012**

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

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

“(1) Subject to subparagraph (2), where a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a **[shareholder]** holder in respect of **[a]** that share, that **[shareholder]** holder must where the date of distribution of that cash or asset occurs—

(a) before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset;

(b) on or after valuation date but before 1 October 2007 and that share is disposed of by the **[shareholder]** holder of that share on or before 31 March 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is disposed of;

(c) on or after 1 October 2007 but before 1 April 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is partly disposed of in terms of paragraph 76A.”;

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

“Where a **[shareholder]** holder of shares uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that **[shareholder]** holder of shares in respect of those shares on or after valuation date but before 1 October 2007, the weighted average base cost of those shares must be determined by—”.

(2) Subsection (1) comes into operation on 1 April 2012.

**Amendment of paragraph 77 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 122 of Act 24 of 2011**

**160.** (1) Paragraph 77 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) A **[shareholder of]** holder of shares in a company that is being wound up, liquidated or deregistered must be treated as having disposed of all the shares held by that **[shareholder]** holder in that company at the earlier of—

- (a) the date of dissolution or deregistration; or
- (b) in the case of a liquidation or winding-up, the date when the liquidator declares in writing that no reasonable grounds exist to believe that the **[shareholder of]** holder of shares in the company (or **[shareholders]** holders of shares holding the same class of shares) will receive any further distributions in the course of the liquidation or winding-up of that company.”;

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

“(2) Where—

- (a) a return of capital or foreign return of capital by way of a distribution of cash or assets in specie is received by or accrues to a shareholder contemplated in subparagraph (1) in respect of a share that is treated as having been disposed of in terms of that subparagraph; and
  - (b) that return of capital or foreign return of capital is received by or accrues to that shareholder after the date contemplated in subparagraph (1)(a) or (b),  
the return of capital or foreign return of capital must be treated as a capital gain in determining that shareholder’s aggregate capital gain or aggregate capital loss for that year of assessment.”;
- and

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

“(2) Where—

- (a) a return of capital or foreign return of capital by way of a distribution of cash or assets *in specie* is received by or accrues to a **[shareholder]** holder of shares contemplated in subparagraph (1) in respect of a share that is treated as having been disposed of in terms of that subparagraph; and
- (b) that return of capital or foreign return of capital is received by or accrues to that **[shareholder]** holder after the date contemplated in subparagraph (1)(a) or (b),  
the return of capital or foreign return of capital must be treated as a capital gain in determining that **[shareholder’s]** holder’s aggregate capital gain or aggregate capital loss for that year of assessment.”.

(2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2012.

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## **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, section 86 of Act 60 of 2008 and section 80 of Act 17 of 2009**

**161.** Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the vesting by a trust of an asset in a trust beneficiary (other than [**the Government, a provincial administration, organisation, person or club**] any person contemplated in paragraph 62(a) to (e)) who is a resident, that gain—”;

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

“Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the disposal of an asset by a trust in a year of assessment during which a trust beneficiary (other than [**a person, organisation, entity or club**] any person contemplated in paragraph 62 (a) to (e)) who is a resident has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the whole or the portion of the capital gain so vested—”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of vestings or disposals made on or after that date.

## **Amendment of paragraph 4 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, section 60 of Act 20 of 2006, section 1 of Act 3 of 2008, section 81 of Act 17 of 2009 and section 12 of Act 13 of 2012**

**162.** (1) Paragraph 4 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (p) of the following subparagraph:

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act[, **1999 (Act No. 1 of 1999)**].”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 10 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 83 of Act 31 of 2005**

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**163.** (1) Paragraph 10 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (iv) of the following item:

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

(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

**Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 130 of Act 45 of 2003 and amended by section 62 of Act 20 of 2006, section 1 of Act 3 of 2008 and section 13 of Act 13 of 2012**

**164.** (1) Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph 3 for subparagraph (p) of the following subparagraph:

“(p) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act[, 1999 (Act No. 1 of 1999)].”.

(2) Subsection (1) comes into operation on 1 January 2014.

**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, section 87 of Act 35 of 2007, section 65 of Act 3 of 2008, section 84 of Act 17 of 2009 and section 113 of Act 7 of 2010**

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

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

“**‘exploration’** means the acquisition, processing and analysis of geological and geophysical data or the undertaking of [other related activity for purposes of defining a trap to be tested by drilling together with well drilling, logging and testing (including extended well testing) up to and including the field appraisal stage] activities in verifying the presence or absence of hydrocarbons (up to and including the appraisal phase) conducted for the purpose of determining if a reservoir is economically feasible to develop;”;

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

“**‘fiscal stability agreement’** means a binding agreement contemplated in section 13 of the Mineral and Petroleum Resources Royalty Act which confers fiscal stability rights;”;

(c) by the insertion after the definition of “fiscal stability agreement” of the following definition:

“**‘fiscal stability rights’** means those rights created in terms of section 14 of the Mineral and Petroleum Resources Royalty Act, the provisions of this schedule and any other rights that may arise in terms of the fiscal stability agreement;”;

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- (d) by the substitution in the definition of “oil and gas company” for subparagraph (ii) of the following subparagraph:  
“(ii) engages in exploration or **[production]** post-exploration in terms of any oil and gas right;”;
- (e) by the substitution in the definition of “oil and gas income” for paragraph (b) of the following paragraph:  
“(b) **[production]** post-exploration in **[terms]** respect of any oil and gas right; or”;
- (f) by the substitution in the definition of “oil and gas right” for paragraphs (a), (b) and (c) of the following paragraphs:  
“(a) any reconnaissance permit, technical co-operation permit, exploration right, or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002),**] or any interest therein;  
(b) any exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002),**] or any interest therein; or  
(c) any production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002),**] or any interest therein;” and
- (g) by the substitution in the definition of “oil and gas right” for paragraph (a) of the following paragraph:  
“(a) any reconnaissance permit, technical co-operation permit, exploration right, or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act **[or any right]** or any interest therein;”;
- (h) by the substitution in paragraph (c) of the definition of “oil and gas right” for the semi-colon of a comma;
- (i) by the addition to the definition of “oil and gas right” of the following words after paragraph (c):  
“in relation to the territorial sea of the Republic of South Africa as well as any sea outside the territorial sea which has been or may be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;” and
- (j) by the substitution for the definition of “production” of the following definition:  
“ **[‘production’ includes]** ‘post-exploration’ means any activity carried out after the completion of the appraisal phase, including—

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(a) the construction of a well;

(b) the separation of oil and gas condensates;

(c) the drying of gas; and

(d) the removal of non-hydrocarbon constituents,

to the extent that these processes are preliminary to refining;”.

(2) Paragraphs (a), (b), (c), (d), (e), (g), (h), (i) and (j) of subsection (1) come into operation on 1 January 2014 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (f) of subsection (1) comes into operation on 1 January 2014.

## **Amendment of paragraph 2 of Tenth Schedule to Act 58 of 1962, as substituted by section 137 of Act 22 of 2012**

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

“2. The rate of tax on taxable income attributable to oil and gas income of any oil and gas company [**will**] must not exceed 28 cents on each rand of taxable income.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 3 of Tenth Schedule to Act 58 of 1962, as amended by section 72 of Act 8 of 2007, section 85 of Act 17 of 2009 and section 138 of Act 22 of 2012**

**167.** (1) Paragraph 3 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—  
(a) by the substitution for the heading of the following heading:

“**[Dividends Tax] Withholding Taxes**”;

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

“(1) The rate of dividends tax contemplated in section 64E that is paid by an oil and gas company on the amount of any dividend derived from oil and gas income must not exceed 0 per cent of the amount of that dividend.”; and

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

“(2) Notwithstanding Part IVA of Chapter II, the rate of withholding tax on interest contemplated in that Part may not exceed 0 per cent of the amount of any interest that is paid by an oil and gas company out of amounts attributable to its oil and gas income to any company that forms part of the same group of companies as the oil and gas company.”.

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(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of amounts paid on or after that date.

## **Amendment of paragraph 5 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006, amended by section 73 of Act 8 of 2007, section 86 of Act 17 of 2009 and section 115 of Act 7 of 2010**

**168.** (1) Paragraph 5 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) For purposes of determining the taxable income of an oil and gas company during any year of assessment, there **[will]** must be allowed as deductions from the oil and gas income of that company all expenditure and losses actually incurred (other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right, except as allowed in paragraph 7(3)) in that year in respect of exploration, or **[production]** post-exploration.”;

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

“In addition to any other deductions (as contemplated in subparagraph (1) other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right) allowable in terms of this paragraph, for purposes of determining the taxable income of an oil and gas company during any year of assessment, there **[will]** may be allowed as deductions from the oil **[or]** and gas income of that company derived in that year of assessment—”;

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

“(a) 100 per cent of all expenditure of a capital nature actually incurred in that year of assessment in respect of exploration in terms of an oil and gas right; and”;

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

“(b) 50 per cent of all expenditure of a capital nature actually incurred in that year of assessment in respect of post-exploration in **[terms]** respect of an oil and gas right.”;

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

“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]** post-exploration may only be set off against—”;

(f) by the substitution in subparagraph (3) for the words following item (b) of the following words:

“to the extent that those assessed losses do not exceed that income.”;

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



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“(4) To the extent that any assessed losses remain after the set-off contemplated in subparagraph (3), an amount equal to 10 per cent of those remaining assessed losses may be **[set-off]** set off against any other income derived by that company.”; and

(h) by the substitution for subparagraph (5) of the following subparagraph:

“(5) To the extent that any assessed loss remains after the set-offs contemplated in subparagraphs (3) and (4), those losses **[will]** may be carried forward to the succeeding year of assessment of that oil and gas company.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Substitution of paragraph 6 of Tenth Schedule to Act 58 of 1962**

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

“EXPLORATION AND POST-EXPLORATION EXPENSES

6. If a company holds an oil and gas right contemplated in paragraph (a) or (b) of the definition of ‘oil and gas right’ during any year of assessment—

(a) that company is deemed to be carrying on a trade in respect of that oil and gas right; and

(b) expenditure and losses incurred by that company in respect of that oil and gas right are deemed to be incurred in the production of income of that company.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 7 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006 and amended by section 75 of Act 8 of 2006, section 75 of Act 7 of 2006 and section 88 of Act 35 of 2007**

**170.** (1) Paragraph 7 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—  
(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) If an oil **[or]** and gas company disposes of any oil and gas right to another company, that oil and gas company and that other company may **[elect in the form and manner determined by the Commissioner]** **[*in lieu*]** instead of any other provision of this Act) agree

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in writing that **[either]** rollover treatment as contemplated in subparagraph (2) or participation treatment as contemplated in subparagraph (3) applies in respect of that right.”;

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

“If an oil **[or]** and gas company disposes of any oil and gas right to another **[oil and gas]** company pursuant to an **[election for]** agreement that rollover treatment as contemplated in subparagraph (1) applies, and the market value of **[which]** that oil and gas right is equal to or exceeds—”;

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

“If an oil **[or]** and gas company disposes of any oil and gas right to another **[oil and gas]** company pursuant to an **[election for]** agreement that participation treatment as contemplated in subparagraph (1) applies and—”; and

(d) by the substitution in subparagraph (3)(b) for the words preceding subitem (i) of the following words:

“If an oil **[or]** and gas company disposes of any oil and gas right to another **[oil and gas]** company pursuant to an **[election for]** agreement that participation treatment as contemplated in subparagraph (1) applies and—”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of paragraph 8 of Tenth Schedule to Act 58 of 1962, as substituted by section 89 of Act 35 of 2007 and amended by section 125 of Act 24 of 2011**

**171.** (1) Paragraph 8 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for items (a) and (b) of the following items:

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

(b) **[In lieu of]** Notwithstanding subparagraph (a), the Minister may enter into a **[binding]** fiscal stability agreement with any company in anticipation of an oil and gas right to be acquired by that company, and **[that]** the fiscal stability agreement so entered into **[will]** must guarantee that the provisions of this Schedule (as at the date on which the oil and gas right is granted) **[will]** apply in respect of that right as long as that right is held by the

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oil and gas company: Provided that this [**binding**] fiscal stability agreement will have no force and effect if the oil and gas right is not granted within one year after the fiscal stability agreement is concluded.”;

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

“(a) In the case of a disposal of an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), an oil and gas company that has concluded [**an**] a fiscal stability agreement as contemplated in subparagraph (1) in respect of that right may, as part of that disposal, assign all of its fiscal stability rights acquired in terms of that fiscal stability agreement relating to the exploration right disposed of to any other oil and gas company.

(b) In the case of a disposal of a production right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), an oil and gas company that has concluded [**an**] a fiscal stability agreement as contemplated in subparagraph (1) in respect of that right disposed of may, as part of that disposal, assign all its fiscal stability rights acquired in terms of that fiscal stability agreement relating to the production right disposed of to another oil and gas company if that other company is a company within the same group of companies as the oil and gas company transferring the fiscal stability [**right**] rights at the time the fiscal stability agreement is concluded.”;

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

“(a) In the case of a disposal of an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**], an oil and gas company that has concluded a fiscal stability agreement as contemplated in subparagraph (1) in respect of that right may, as part of that disposal, assign all of its fiscal stability rights acquired in terms of that fiscal stability agreement relating to the exploration right disposed of to any other oil and gas company.

(b) In the case of a disposal of a production right, as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**], an oil and gas company that has concluded a fiscal stability agreement as contemplated in subparagraph (1) in respect of that right disposed of may, as part of that disposal, assign all its fiscal stability rights acquired in terms of that fiscal stability agreement relating to the production right disposed of to another oil and gas company if that other company is a company within the same group of companies as the oil and gas company transferring the fiscal stability rights at the time the fiscal stability agreement is concluded.”;

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

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“(3) If an oil and gas company holding a participating interest in an oil and gas right has concluded **[an] a fiscal stability** agreement contemplated in subparagraph (1), the **[terms and conditions] fiscal stability rights** of that **fiscal stability** agreement **[will]** apply to all participating interests subsequently held by that company in that oil and gas right.”;

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

“(4) An oil and gas company that has concluded **[an] a fiscal stability** agreement contemplated in subparagraph (1) in respect of an oil and gas right may at any time unilaterally terminate the **fiscal stability** agreement in respect of that oil and gas right so held with effect from the commencement of the year of assessment immediately following the notification date of the termination.”;

(f) by the substitution of subparagraph (5) for the following subparagraph:

“(5) The portion of taxable income and profits of an oil and gas company derived from all the oil and gas rights governed by the version of the Schedule applicable to an oil and gas right covered by a **[binding] fiscal stability** agreement referred to in subparagraph (1), must be determined in terms of that version of the Schedule.”;

(g) by the substitution of subparagraph (6) for the following subparagraph:

“(6) If the State fails to comply with the terms of the **fiscal stability** agreement contemplated in subparagraph (1) and that failure has a material adverse economic impact on the taxation of income or profits of the oil and gas company that is party to that **fiscal stability** agreement, that oil and gas company is entitled to compensation for the loss of market value caused by that failure (and interest at the prescribed rate calculated on the compensation from the date of non-compliance) or to an alternative remedy that otherwise eliminates the full impact of that failure.”; and

(h) by the substitution in subparagraph (7)(a) for subitems (i), (ii) and (iii) of the following subitems:

- (i) exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**] or any right or interest therein;
- (ii) exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**] or any interest therein; or
- (iii) production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act[, **2002 (Act No. 28 of 2002)**] or any interest therein; and”.

(2) Paragraphs (a), (b), (d), (e), (f) and (g) of subsection (1) come into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

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(3) Paragraphs (c) and (h) of subsection (1) come into operation on 1 January 2014.

## **Amendment of Eleventh Schedule to Act 58 of 1962, as inserted by section 140 of Act 22 of 2012**

**172.** (1) The Eleventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the grant “Capital Restructuring Grant received or accrued from the Department of Housing” of the grant “Capital Restructuring Grant received or accrued from the Department of Human Settlements”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **PART IV**

### **Interpretation**

**173.** For the purposes of this Part any word or expression to which a meaning has been assigned in the Value-Added Tax Act, 1991 (Act No. 89 of 1991), bears the meaning so assigned unless the context otherwise indicates.

**Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 119 of Act 7 of 2010, section 129 of Act 24 of 2011 and section 145 of Act 22 of 2012**

**174.** (1) Section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), is hereby amended—  
(a) by the substitution in subsection (1) for the definition of “cash value” for the words preceding paragraph (a) of the following words:

“ ‘**cash value**’, in relation to the supply of goods supplied under an instalment credit agreement or by a surrender of goods as defined in this section, means—”;

(b) by the substitution in subsection (1) in paragraph (d) of the definition of “connected person” for subparagraph (i) of the following subparagraph:

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“(i) any person (other than a company) where that person, his spouse or minor child or any trust fund in respect of which that person, his spouse or minor child is or may be a beneficiary, is separately interested or two or more of them are in the aggregate interested in 10 per cent or more of the company’s paid-up capital or 10 per cent or more of the company’s equity [**share capital**] shares (as defined in section 1 of the Income Tax Act) or 10 per cent or more of the voting rights of the shareholders of the company, whether directly or indirectly; or”;

(c) by the substitution in subsection (1) for the definitions of “customs controlled area” and “customs controlled area enterprise” of the following definitions:

“**customs controlled area**’ has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act;

‘**customs controlled area enterprise**’ has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act;”;

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

“‘e-commerce services’ means the supply of any services where the placing of an order and delivery of those services is made electronically;”;

(e) by the addition in subsection (1) to paragraph (b) of the definition of ‘enterprise’ of the following subparagraph after subparagraph (v):

“(vi) the supply of e-commerce services by a person that is not a resident of the Republic—  
(aa) to a recipient that is a resident of the Republic; or  
(bb) where one or more payments to that person originates from a bank registered in terms of the Banks Act, 1994 (Act No. 94 of 1994);”.

(f) by the substitution in subsection (1) for paragraph (d) of the definition of “exported” for the following paragraph:

“(d) removed from the Republic by the recipient or recipient’s agent for conveyance to an export country in accordance with [**the provisions of an export incentive scheme**] any regulation approved by the Minister;”;

(g) by the substitution in subsection (1) for the definitions of “Industrial Development Zone” and “Industrial Development Zone (IDZ) operator” of the following definitions:

“**Industrial Development Zone (IDZ)**’ has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act;

‘**Industrial Development Zone (IDZ) operator**’ has the meaning assigned thereto in terms of section 21A(1A) or (1) of the Customs and Excise Act;”;

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(h) by the substitution in subsection (1) in paragraph (c) of the definition of “input tax” for the words preceding the proviso of the following words:

“an amount equal to the tax fraction of the consideration in money deemed by section 10(16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement or a surrender of goods”;

(i) by the deletion in the definition of “second-hand goods” of paragraph (b);

(j) by the deletion in the definition of “second-hand goods” of the word “and” at the end of subparagraph (iv);

(k) by the addition in the definition of “second-hand goods” of the word “and” at the end of subparagraph (v);

(l) by the addition in the definition of “second-hand goods” of the following subparagraph after subparagraph (v):

“(vi) the transfer of a unit, as defined in the Share Blocks Control Act, in the circumstances contemplated in Item 8 of Schedule 1 of that Act;”;

(m) by the deletion of the definition of “service enterprise”; and

(n) by the insertion in subsection 1 after the definition of “supply” of the following definition:

“‘surrender of goods’ means the termination of any instalment credit agreement or any other agreement by a debtor and subsequent obligation on the creditor, to that agreement, to take possession of any goods previously supplied under that agreement as contemplated in section 127 of the National Credit Act, 2005 (Act No. 34 of 2005);”.

(2) Paragraphs (a), (h) and (n) of subsection (1) come into operation on 1 January 2014 and apply in respect of goods surrendered on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2012.

(4) Paragraphs (c) and (g) come into operation on the date the Special Economic Zones Act, 2013, comes into operation.

(5) Paragraphs (d) and (e) of subsection (1) come into operation on 1 January 2014 and apply in respect of supplies of **e-commerce** services on or after that date.

(6) Paragraph (f) of subsection (1) comes into operation on 1 January 2014 and applies in respect of movable goods supplied on or after that date.

(7) Paragraphs (i), (j), (k) and (l) of subsection (1) come into operation on 1 January 2014 and apply in respect of goods supplied on or after that date.

(8) Paragraph (m) of subsection (1) comes into operation on 1 January 2014.



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**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, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act 7 of 2010, section 131 of Act 24 of 2011 and section 146 of Act 22 of 2012**

**175.** Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (10) of the following subsection:

“(10) For the purposes of this Act—

(a) where any goods are repossessed under an instalment credit agreement; or

(b) where there is a surrender of goods,

a supply of such goods shall be deemed to be made by the debtor under such instalment credit agreement or surrender of goods to the person exercising his right or obligation of possession under such instalment credit agreement or surrender of goods, and where such debtor is a vendor the supply shall be deemed to be made in the course or furtherance of **[his]** the vendor’s enterprise unless such goods did not form part of the assets held or used by **[him]** the vendor for the purposes of **[his]** the vendor’s enterprise.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of goods surrendered on or after that date.

**Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991, section 25 of Act 97 of 1993, section 21 of Act 46 of 1996, section 26 of Act 27 of 1997, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, section 103 of Act 31 of 2005, section 172 of Act 34 of 2005, section 28 of Act 36 of 2007 and section 27 of Act 8 of 2010**

**176.** Section 9 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(4) Subject to the provisions of subsections (2) (a) and (6)—

(a) where goods are supplied under an agreement, other than an instalment credit agreement or rental agreement, and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time they are appropriated, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest; and



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(b) where services are supplied under an agreement and the consideration for such services supplied in whole or part is not determined at the time that such services are rendered or performed, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest.”;

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

“(8) Where a supply of **[repossessed]** goods is deemed by section 8(10) to be made by a debtor **[under]** in terms of a repossession under an instalment credit agreement or a surrender of goods, the time of that supply shall be deemed to be the day on which the goods are repossessed or surrendered or, where the debtor may under any law be reinstated in his rights and obligations under such agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.”.

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

“(j) constitutes an amount received or accrued in respect of the disposal of an asset that constitutes immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property contemplated in paragraph 2(2) of the Eighth Schedule and that property is situated in the Republic;”;

(d) by the substitution in subsection (3) at the end of paragraph (a) for the expression “; and” of a full stop; and

(e) by the deletion in subsection (3) of paragraph (b).

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of services supplied on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014 and applies in respect of goods surrendered on or after that date.

(4) Paragraphs (c), (d) and (e) of subsection (1) are deemed to have come into operation on 1 June 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001, section 168 of Act 45 of 2003, section 97 of Act 32 of 2004, section 104 of Act 31 of 2005, section 43 of Act 9 of 2006, section 80 of Act 20 of 2006, section 82 of Act 8 of 2007, section 107 of Act 60 of 2008, section 122 of Act 7 of 2010 and section 133 of Act 24 of 2011**

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**177.** Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (16) for the words preceding the proviso of the following words:

“Where by reason of either the repossession of goods from a debtor under an instalment credit agreement or a surrender of goods a supply of such goods is deemed by section 8(10) to be made by that debtor, the consideration in money for that supply shall be deemed to be an amount equal to the balance of the cash value of the goods (being the cash value thereof applied under subsection (6) in respect of the supply of the goods to the debtor under the said agreement) which has not been recovered on the date on which the supply of the goods by the debtor is deemed by section 9(8) to be made”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of goods surrendered on or after that date.

**Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007, Government Notice R.1024 in Government Gazette 32664 of 30 October 2009 and section 134 of Act 24 of 2011**

**178.** (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (s) of the following paragraph:

“(s) the goods (being fixed property) are supplied to the [**Minister of Land Affairs**] Cabinet member responsible for land reform who acquired those goods in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), or section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); or”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006, section 109 of Act 60 of 2008 and section 147 of Act 22 of 2012**

**179.** (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion in paragraph (f) of the word “or” at the end of subparagraph (ii);

(b) by the addition to paragraph (f) of the word “or” at the end of subparagraph (iii);

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(c) by the substitution in paragraph (f) for the semi-colon at the end of subparagraph (iii) of a comma; and

(d) by the addition to paragraph (f) of the following subparagraph after subparagraph (iii):

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

(A) has been formed solely for purposes of managing the collective interests of residential property use or ownership of 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

(B) is not permitted to distribute any of its funds to any person other than a similar association of persons.”.

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

“where the cost of supplying such services is met out of contributions levied by such body corporate, [or] share block company or under such housing development scheme or association, as the case may be: Provided that this paragraph shall not apply or shall apply to a limited extent where such body corporate, [or] share block company, scheme or association applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs that the provisions of this paragraph shall not apply to that body corporate, [or] share block company, scheme or association or that the provisions of this paragraph shall apply only to a limited extent specified by him: Provided further that this paragraph shall not apply to the services supplied by any body corporate, [or] share block company, scheme or association which manages a property time-sharing scheme as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983);”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of services supplied on or after that date.

**Amendment of section 13 of Act 29 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31**

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**of 2005, section 110 of Act 60 of 2008, section 135 of Act 24 of 2011 and section 271 read with paragraph 112 of Schedule 1 of Act 28 of 2011**

**180.** (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (2B) of the following subsection:

“(2B) Notwithstanding subsection (2), the value to be placed on the importation of goods into the Republic where—

(a) Note 1A of Item No. 412.07 of Schedule 1 to this Act is applicable; or

(b) Note 5(a)(ii)(aa) of Item No. 470.03/00.00/02.00 of Schedule 1 to this Act is applicable, shall be the value determined under section 10 (3).”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of section 15 of Act 89 of 1991, as amended by paragraph 8 of Government Notice 2695 of 8 November 1991, section 20 of Act 136 of 1992, section 31 of Act 27 of 1997, section 90 of Act 30 of 1998, section 46 of Act 9 of 2006, section 37 of Act 21 of 2006, section 13 of Act 9 of 2007 and section 271 read with paragraph 114 of Schedule 1 of Act 28 of 2011**

**181.** (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion in subsection 2(a)(vi) of the word “or” at the end of subparagraph (vi);

(b) by the addition in subsection (2)(a) after subparagraph (vi) of the following subparagraph:

“(vii) carrying on an enterprise as contemplated in paragraph (b)(vi) of the definition of ‘enterprise’ in section 1; or”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011 and section 148 of Act 22 of 2012**

**182.** (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

“the vendor[, **in any other case,**] is in possession of documentary proof other than any documentary proof as contemplated in paragraphs (a) to (e), as is acceptable to the

Commissioner, substantiating the vendor’s entitlement to the deduction at the time a return in respect of the deduction is furnished”;

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

“(iii) charged in terms of section 7(1)(b) in respect of goods imported into the Republic by the vendor and **[invoiced or]** paid **[, whichever is the earlier,]** during that tax period;”;

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

“(l) an amount as determined by the Commissioner in lieu of a refund in respect of the purchase and use of diesel paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the **[Minister of Agriculture and Land Affairs]** Cabinet member responsible for agriculture to compensate that supplier for an amount refundable in the production of such goods;”;

(d) by the substitution in subsection (3) in paragraph (i) of the proviso for subparagraph (cc) of the following subparagraph:

“(cc) second-hand goods were acquired or goods as contemplated in section 8(10) were repossessed or surrendered.”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 January 2014.

(3) Paragraph (d) of subsection (1) comes into operation on 1 January 2014 and applies in respect of goods surrendered on or after that date.

**Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997, section 92 of Act 30 of 1998, section 88 of Act 53 of 1999, section 173 of Act 45 of 2003, section 102 of Act 32 of 2004, section 108 of Act 31 of 2005, section 48 of Act 9 of 2006, section 84 of Act 20 of 2006, section 84 of Act 8 of 2007 and section 31 of Act 36 of 2007**

**183.** (1) Section 17 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2)(a) for subparagraph (iii) of the following subparagraph:

“(iii) such goods or services consist of **[a meal or refreshment]** entertainment supplied by the vendor as operator of any conveyance to a passenger or crew member, in such conveyance during a journey, where such **[meal or refreshment]** entertainment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of services supplied on or after that date.

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## **Amendment of section 18B of Act 89 of 1991 .....**

**184.** (1) Section 18B of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (4).

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of goods being fixed property supplied on or after that date.

**Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010 and section 29 of Act 21 of 2012**

**185.** Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after subsection (5A) of the following subsection:

“(5B) Notwithstanding any other provision of this Act, if the supply by a vendor relates to any enterprise contemplated in paragraph (b)(vi) of the definition of ‘enterprise’ in section 1, the vendor shall be required to provide a tax invoice as contemplated in subsection (5).”

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

“(b) the date upon which the second-hand goods were acquired or the goods were repossessed or surrendered, as the case may be;”

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of supplies of **e-commerce** services on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014 and applies in respect of goods surrendered on or after that date.

**Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996, section 36 of Act 27 of 1997, section 95 of Act 30 of 1998, section 177 of Act 45 of 2003, section 110 of Act 31 of 2005, section 86 of Act 20 of 2006 and section 140 of Act 24 of 2011**

**186.** (1) Section 22 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(i) in respect of any amount which has become irrecoverable in respect of either an instalment credit agreement or an agreement contemplated in section 127 of the National

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Credit Act, 2005 (Act No. 34 of 2005), if the vendor has repossessed or has been obligated to take possession of the goods supplied in terms of that agreement; or”; and

(b) by the substitution in subsection (3) in paragraph (ii) of the proviso for subparagraph (cc) of the following subparagraph:

“(cc) vendor has entered into a compromise [**or an arrangement**] in terms of section [311] 155 of the Companies Act, [**1973 (Act No. 61 of 1973)**] 2008 (Act No. 71 of 2008), or a similar arrangement with creditors; or”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of goods surrendered on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014.

**Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008, section 93 of Act 17 of 2009, section 23 of Act 7 of 2010 and section 141 of Act 24 of 2011**

**187.** (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(b) at the commencement of any month where [**there are reasonable grounds for believing that**] the total value of the taxable supplies in terms of a contractual obligation in writing to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed the above-mentioned amount.”;

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

“(1A) Every person who, on or after the commencement date, carries on any enterprise as contemplated in paragraph (b)(vi) of the definition of ‘enterprise’ in section 1 and is not registered, becomes liable to be registered at the end of the month in which e-commerce services are supplied.”.

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

“(a) that person is a ‘municipality’ or ‘designated entity’ as defined in section 1 or is carrying on any enterprise or intends carrying on any enterprise as contemplated in paragraph (b)(ii)[, **(iii)**] or (v) of the definition of ‘enterprise’ in section 1; or”;

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

“(b) that person is carrying on any enterprise or intends to carry on any enterprise and in the course of such enterprise makes taxable supplies within a period of 12 months: Provided that a person may only be registered under this provision if that person has incurred



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expenditure of at least R5 million in connection with the commencement of such enterprise or must incur such amounts in terms of a contractual obligation in writing.”;

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

“(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 R50 000 in the preceding period of 12 months**] as contemplated in section 11(1)(e); or”;

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

“(d) that person is carrying on any enterprise or intends carrying on any enterprise where in the course of such enterprise, makes taxable supplies within a period of 12 months from the date of the commencement of such enterprise.”.

(2) Paragraphs (a), (c), (d), (e) and (f) of subsection (1) come into operation on 1 January 2014.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014 and applies in respect of supplies of e-commerce services on or after that date.

## **Amendment of section 24 of Act 89 of 1991, as amended by section 21 of Act 20 of 1994 and section 93 of Act 53 of 1999**

**188.** (1) Section 24 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (5) of the following subsection:

“(5A) Where the Commissioner is satisfied that the total value of taxable supplies of a vendor registered in terms of section 23(3)(d) does not exceed R100 000 for any period of 12 months during the period of 24 months from the date of the commencement of the vendor’s enterprise, the Commissioner may cancel such vendor’s registration with effect from the last day of the tax period during which the Commissioner is so satisfied, or from such other date as may be determined by the Commissioner.”.

(2) Subsection (1) comes into operation on 1 January 2014.

## **Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 36 of Act 36 of 2007, section 43 of Act 61 of 2008 and section 271 read with item 133 of Schedule 1 of Act 28 of 2011**

**189.** (1) Section 44 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion in subsection (3) of the word “or” at the end of paragraph (c);



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(b) by the substitution in subsection (3)(d) for paragraph (ii) of the proviso of the following paragraph:

- “(ii) (aa) a subsidiary company, as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), of a holding company, as defined in section 1 of [the Companies Act, 1973 (Act No. 61 of 1973)] that Act, requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of that holding company;
- (bb) a subsidiary company, as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of another subsidiary company of its holding company, as defined in section 1 of [the Companies Act, 1973 (Act No. 61 of 1973)] that Act; or
- (cc) a holding company, as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of its subsidiary company, as defined in section 1 of [the Companies Act, 1973 (Act No. 61 of 1973)] that Act.”;

(c) by the substitution in subsection (3) for the full stop after paragraph (d) of the expression “; or”;

and

(d) by the addition to subsection (3) after paragraph (d) of the following paragraph:

- “(e) in the case of a vendor registered under the provisions of section 23(3)(d), the Commissioner is satisfied that the vendor has made taxable supplies within a continuous period of 12 months of at least R100 000 from the date of the commencement of the enterprise of the vendor.”.

(2) Subsection (1) comes into operation on 1 January 2014.

**Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July, 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in *Government Gazette* 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005,**

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section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act No. 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in *Government Gazette* 30370 of 12 October 2007, section 107 of Act 35 of 2007, Government Notice R.766 in *Government Gazette* 32416 of 24 July 2009 and section 143 of Act 24 of 2011

190. (1) Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion in Item No. 412.00 after Note 1 of the following note:

“1A. For the purposes of item no. 412.07—

(a) any offer to abandon or application to destroy any goods shall be in writing by or on behalf of the owner thereof, and shall—

(i) include the bill of entry, the invoices and other documents relating to the importation of the goods;

(ii) state the identifying particulars of the goods;

(iii) state the reason for abandonment, or if application is made for destruction the reason why destruction and not abandonment is requested; and

(iv) indemnify the Commissioner against any claim by any other person;

(b) the owner shall be responsible for the cost of storage in and removal to the customs and excise warehouse or any place of security indicated by the Commissioner, if such storage or removal is required by the Commissioner, and for any other expenses, including the cost of destruction;

(c) goods shall be destroyed under the supervision of an officer; and

(d) goods in respect of which security of the duty due has been furnished to the Commissioner shall be deemed to be under control of the Commissioner.”;

(b) by the insertion after Item No. 412.04/00.00/01.00 of the following items:

**“412.07 Goods unconditionally abandoned to the Commissioner by the owner or goods destroyed with the permission of the Commissioner: provided that the Commissioner may decline to accept abandonment or grant permission for destruction**

412.07/00.00/01.00 Goods while still in a customs and excise warehouse or under the control of the Commissioner (excluding goods cleared under Schedule No. 3 of the Customs and Excise Act)

412.07/00.00/02.00 Goods cleared under Schedule No. 3 of the Customs and Excise Act

412.07/87.00/01.02 Motor vehicles cleared under any item of Schedule No. 4 of the Customs and Excise Act, damaged by accident or unavoidable cause”; and

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(c) by the insertion after Item No. 413.06/00.00/01.00 of the following items:

**460.23** **GOODS IMPORTED OR CLEARED FROM A CUSTOMS AND EXCISE WAREHOUSE FOR THE EXPLORATION FOR PETROLEUM OR PRODUCTION OF PETROLEUM AS CERTIFIED BY THE DIRECTOR-GENERAL: MINERAL AND PETROLEUM RESOURCES**

**NOTES:**

1. For the purposes of **paragraph** (ii), the person entering such goods under rebate of duty shall be liable for the duty rebated, unless the person proves that such goods so supplied are used in the manufacture of the equipment, installation or device which has been delivered to the person referred to in **subparagraph** (2).

460.23.00.00.01.00 Goods imported or cleared from a customs and excise warehouse by a person who—

(i) is certified by the Director-General: Mineral Resources (or the Chief Executive Officer of the agency designated in terms of section 70 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)) to be a person who, in the Republic (including the territorial waters and the continental shelf of the Republic)—

(1) explores for petroleum in terms of an exploration right issued in terms of section 80 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(2) produces petroleum in terms of a production right issued in terms of section 84 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); **and**

(3) is a contractor of any person referred to in paragraph (1) or (2);

(ii) subject to the approval of the said Director-General (or the Chief Executive Officer of the agency designated in terms of section 70 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)), is a person (including, if a company, any

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subsidiary of such company) referred to in subparagraph (1) or (3) who supplies such goods direct to any person or to any contractor or any person referred to in paragraph (2), for use in the manufacture of any equipment, installation or device, for use solely in operations in connection with the exploration for, or production of, petroleum, in such quantities and at such times as the International Trade Administration Commission, may allow by specific permit (excluding—

(a) distillate fuels, residual fuel oil and biodiesel;

(b) goods for the personal use of any person; and

(c) goods for use in the exploitation or processing of any product other than petroleum as defined in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)).”;

(d) by the substitution in Item 490.00 for Note 5 of the following note:

“5. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption, whereupon tax must be paid, or by abandonment or destruction **[of the goods whereupon tax must be paid]**. The provisions of Item 412.07 will apply to the abandonment or destruction of the goods concerned.”.

(2) Paragraphs (a), (b) and (d) of subsection (1) come into operation on 1 January 2014.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2014 and applies in respect of goods imported on or after that date.

## PART V

### Interpretation

**191.** For the purposes of this Part any word or expression to which a meaning has been assigned in the principal Act to be amended bears the meaning so assigned unless the context otherwise indicates.

### Repeal of Act 50 of 1998

**192.** (1) The Demutualisation Levy Act, 1998 (Act No. 50 of 1998), is hereby repealed.

(2) Subsection (1) comes into operation on 1 January 2014.

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## **Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008, section 97 of Act 17 of 2009, section 127 of Act 7 of 2010 and section 248 of Act 24 of 2011**

**193.** (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended by the insertion in subsection (1)(a) after subparagraph (i) of the following subparagraph:

“(iA) in terms of a substitutive share-for-share transaction referred to in section 43 of the Income Tax Act or in terms of paragraph 11(2)(l) of the Eighth Schedule to the Income Tax Act.”.

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

## **Amendment of section 104 of Act 35 of 2007**

**194.** (1) Section 104 of the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007), is hereby amended by the deletion in subsection (1) of paragraphs (a) and (b).

(2) Subsection (1) is deemed to have come into operation on 8 January 2008.

## **Amendment of section 5 of Act 28 of 2008, as amended by section 98 of Act 17 of 2009 and section 132 of Act 17 of 2010**

**195.** (1) Section 5 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

(a) by the substitution in subsection (3) at the end of paragraph (f) for the expression “; and” of a full stop; and

(b) by the deletion in subsection (3) of paragraph (g).

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of a mineral resource transferred on or after that date.

## **Amendment of section 6A of Act 28 of 2008, as amended by section 134 of Act 7 of 2010**

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

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

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“(a) is transferred below the **[minimum]** condition specified in Schedule 2 for that mineral resource, the mineral resource must be treated as having been brought to the **[minimum]** condition specified for that mineral resource; or

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

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

“(1A). If any unrefined mineral resource with a range is transferred—

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

(b) at or within the range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at that condition; or

(c) at a condition above the maximum range of conditions specified in Schedule 2, the mineral resource must be treated as having been transferred at the higher of the maximum of the range of conditions specified for that mineral resource or the condition in which that mineral resource was extracted.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of any mineral resources transferred on or after that date.

## **Amendment of section 7 of Act 28 of 2008**

**197.** (1) Section 7 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

(a) by the substitution in subsection (1) at the end of paragraph (c) for the expression “; and” of a full stop; and

(b) by the deletion in subsection (1) of paragraph (d).

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of a mineral resource transferred on or after that date.

## **Amendment of Schedule 1 to Act 28 of 2008, as amended by section 136 of Act 7 of 2010**

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**198.** (1) Schedule 1 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

(a) by the substitution for the words in the “Refined condition” column corresponding to “Lead” of the following words:

“Lead is refined once processed into bars and billets containing **[at least]** 99.0 % pure lead.”; and

(b) by the substitution for the words in the “Refined condition” column corresponding to “Vanadium” of the following words:

“Vanadium as chemically extracted and refined to a **[minimum]** purity of 10% V<sub>2</sub>O<sub>5</sub> equivalent and above”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of any mineral resources transferred on or after that date.

## **Amendment of Schedule 2 to Act 28 of 2008, as amended by section 103 of Act 17 of 2009 and section 137 of Act 7 of 2010**

**199.** (1) Schedule 2 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended—

(a) by the substitution for the words in the “Unrefined condition” column corresponding to “Coal” of the following words:

“**[Minimum calorific]** Calorific value of 19.0MJ/kg to 27MJ/kg”;

(b) by the substitution for the words in the “Unrefined condition” column corresponding to “Iron ore” of the following words:

“Plant feed **[with a minimum]** of 61.5% Fe content”;

(c) by the substitution for the words in the “Unrefined condition” column corresponding to “Lead” of the following words:

“Concentrate **[with a minimum]** of 50% Pb”;

(d) by the substitution for the words in the “Unrefined condition” column corresponding to “Limestone” of the following words:

“Concentrate **[with a minimum]** of 54% CaCO<sub>3</sub>”;

(e) by the substitution for the words in the “Unrefined condition” column corresponding to “Ilmenite” of the following words:

“**[A minimum of]** 80% FeTiO<sub>3</sub>”;

(f) by the substitution for the words in the “Unrefined condition” column corresponding to “Rutile” of the following words:

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“**[A minimum of]** 70% TiO<sub>2</sub> concentrate”;

(g) by the substitution for the words in the “Unrefined condition” column corresponding to “Zircon” of the following words:

“**[A minimum of]** 90% ZrO<sub>2</sub> + SiO<sub>2</sub> + HfO<sub>2</sub>”; and

(h) by the substitution for the words in the “Unrefined condition” column corresponding to “Tungsten (CaWO<sub>4</sub>) and Wolfram” of the following words:

“**[Minimum]** 65% WO<sub>3</sub> in concentrate”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of any mineral resources transferred on or after that date.

## **Amendment of section 6 of Act 29 of 2008**

**200.** (1) Section 6 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution of subsection (1) for the following subsection:

“(1) A registered person must submit a return (as the Commissioner may prescribe) for the royalty payable in respect of a year of assessment within **[six]** twelve months after the last day of that year.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 19 of Act 29 of 2008, amended by section 38 of Act 8 of 2010**

**201.** (1) Section 19 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

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

“**[In respect of a year of assessment an]** The Commissioner must annually submit to the Minister of Finance a report, in the form and manner that the Minister may prescribe, within six months from the date that the Commissioner received the report from each extractor, advising the Minister of—”;

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

“(a) the volume of mineral resources transferred by **[that]** each extractor;

(b) the gross sales of **[that]** each extractor as mentioned in section 6(1) and (2) of the Royalty Act;”;



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

“(bA) the adjusted gross sales of the extractor if that adjustment is required in terms of section 6(5) of the Royalty Act”;

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

“(2) The Minister of Finance and every person employed or engaged by him or her and the Commissioner and every person engaged by him or her must preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge by virtue of subsection (1), and may not communicate any such matter to any person whatsoever other than the Minister, the Commissioner or the registered person concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession of the Minister, the Commissioner or person except in the performance of his or her duties as required by the laws of the Republic or by order of a competent court.”; and

(e) by the deletion in subsection (7) of paragraph (a).

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 13 of Act 24 of 2011**

**202.** (1) Section 13 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) [**comes**] is deemed to have come into operation on [**a date determined by the Minister by notice in the Gazette, which date must be later than 1 January 2012,**] 1 July 2013 and applies in respect of amounts of tax withheld or imposed by any sphere of government of any country other than the Republic during years of assessment commencing on or after [**the**] that date [**so determined**].”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of amounts of tax withheld or imposed by any sphere of government of any country other than the Republic during years of assessment commencing on or after that date.

## **Amendment of section 70 of Act 24 of 2011, as amended by section 173 of Act 22 of 2012**

**203.** (1) Section 70 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 30 August 2011 and apply in respect of debt instruments and shares issued on or after that date, other than debt instruments and shares issued in terms of intra-group transactions which, but for any suspensive conditions contained in such agreements, would have been entered into [on or after] before that date.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

## **Amendment of section 2 of Act 22 of 2012**

**204.** (1) Section 2 of the Taxation Laws Amendment Act, 2012, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (w); and

(b) by the deletion of subsection (14).

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 17 of Act 22 of 2012**

**205.** (1) Section 17 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) ceases to be a controlled foreign company [**in relation to a resident**],”.

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

## **Amendment of section 19 of Act 22 of 2012**

**206.** (1) Section 19 of the Taxation Laws Amendment Act, 2012, is hereby amended—

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

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

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

## **Amendment of section 22 of Act 22 of 2012**

**207.** (1) Section 22 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Paragraph (c) of subsection (1) comes into operation on 1 March [**2013**] 2014 and applies in respect of amounts received or accrued on or after that date”.

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

## **Amendment of section 50 of Act 22 of 2012**

**208.** (1) Section 50 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January [2013] 2014 and applies in respect of premiums incurred and policy benefits received or accrued on or after that date”.

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

## **Amendment of section 53 of Act 22 of 2012**

**209.** (1) Section 53 of the Taxation Laws Amendment Act, 2012, is hereby amended—

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

“(2) Paragraphs (g), (k)[, (l)] and (m) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment, commencing on or after that date.”;

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

“(3) Paragraph (l) of subsection (1) comes into operation on 1 January 2014 and applies in respect tax years of a person ending before the year of assessment, commencing on or after that date.”; and

(c) by the substitution in subsection (3) for (4).

(2) Subsection (1) comes into operation on 1 February 2013.

## **Amendment of section 54 of Act 22 of 2012**

**210.** (1) Section 54 of the Taxation Laws Amendment Act, 2012, is hereby amended-

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

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

(2) Subsection (1) is deemed to have come into operation on 1 January 2014.

## **Repeal of section 58 of Act 22 of 2012**

**211.** (1) The Taxation Laws Amendment Act, 2012, is hereby amended by the repeal of section 58.

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(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 83 of Act 22 of 2012**

**212.** (1) Section 83 of the Taxation laws Amendment Act, 2012, is hereby amended by the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) by the substitution in subsection (4)(b)(ii) for **[subparagraph (i)]** item (aa) of the following **[subparagraph]** item:

‘**[(i)](aa)** the market-related interest in respect of that **[loan or advance]** debt, less the amount of interest that is payable to that company in respect of that **[loan or advance]** debt for that year of assessment; or?’.

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

## **Amendment of section 89 of Act 22 of 2012**

**213.** (1) Section 89 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

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

‘submitted to the regulated intermediary—

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

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be the beneficial owner.’”

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

## **Amendment of section 98 of Act 22 of 2012**

**214.** (1) Section 98 of the Taxation Laws Amendment Act, 2012, is hereby amended—

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

“~~[The]~~ Paragraph 5 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—  
”; and

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

“(c) by the substitution for the words in subparagraph (1) after item (e) of the following words:

‘as has not been exempted in terms of section 10C or has not previously been allowed to the person as a deduction in terms of this Schedule in determining the amount to be included in that person’s gross income.’; and”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 February 2013.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.

## **Amendment of section 99 of Act 22 of 2012**

**215.** (1) Section 99 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

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

‘as has not been exempted in terms of section 10C or has not previously been allowed to the person as a deduction in terms of this Schedule in determining any amount to be included in that person’s gross income.’.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.

## **Amendment of section 117 of Act 22 of 2012**

**216.** (1) Section 117 of the Taxation Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 **[January]** March 2013 and applies in respect of disposals made on or after that date”.

(2) Subsection (1) is deemed to have come into effect on 1 January 2013 and applies in respect of disposals made on or after that date.

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## **Special zero-rating in respect of goods and services supplied by Cricket South Africa**

**217.** (1) The supply of goods and services by Cricket South Africa in respect of the hosting of the Champions League Twenty20 (2012) event shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act at the rate of zero per cent to the extent that the consideration for that supply is received from the Governing Council of the Champions League Twenty20.

(2) Subsection (1) is deemed to have come into operation on 1 July 2012.

## **Short title and commencement**

**218.** (1) This Act is called the Taxation Laws Amendment Act, 2013.

(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 assessment 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 2013.