

REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS AMENDMENT
ACT**

(The English text is the official text of the Act)

(MINISTER OF FINANCE)

[A 30—2000]

distributed that are deemed to be dividends for the purposes of Secondary Tax on Companies; to further regulate the provisions relating to the furnishing of returns; to further regulate the duty of companies to furnish returns in consequence of the taxation of foreign dividends; to further regulate the procedures relating to inquiries; to further regulate the publication of judgments or decisions of the Special Court for hearing of income tax appeals; to further regulate the power to appoint agents so as to also require the payment of interest and penalties from moneys held by such agents; to provide that employees' tax be deducted from remuneration paid to personal service companies and personal service trusts; to further define expressions for the purposes of the Fourth Schedule; to further regulate the issuing of certificates of exemption for employees' tax purposes; to further define an expression for the purposes of the Seventh Schedule; and to further regulate the determination of the value of any fringe benefit relating to holiday accommodation; to amend the Customs and Excise Act, 1964, so as to further define an expression in consequence of the introduction of an air passenger tax; to provide for the introduction of an air passenger tax; to provide that the Minister of Finance may publish in a notice certain agreements or protocols which shall be enacted into law; to make provision for a rebate of fuel levy on imported goods; to make provision for a refund of duty in respect of imported goods entitled to a preferential rate of duty; to further regulate the payment of interest; to amend Schedule No. 1 to the said Act and the effective date thereof; to provide for the continuation of amendments to the Schedules; and to amend the long title of the said Act; to amend the Stamp Duties Act, 1968, so as to withdraw certain exemptions; to further regulate certain exemptions relating to public benefit organisations; to provide for an exemption; to provide that any amount of stamp duty or penalty which does not exceed R400 may be denoted by way of adhesive stamps; to further regulate penalties which may be imposed in respect of offences; to further regulate the procedures relating to inquiries; to amend Schedule 1 to the said Act to withdraw certain exemptions; to delete the reference to obsolete provisions; and to effect certain textual amendments; to amend the Eskom Act, 1987, so as to provide for the taxation of the receipts and accruals of Eskom and its subsidiaries; to amend the Value-Added Tax Act, 1991, so as to further define certain expressions; to include certain services in the zero-rating provisions; to create a new category of vendors for the purposes of accounting for tax; to further regulate the period within which a return has to be submitted; to provide for agreed assessments; to extend the circumstances in which the Commissioner may call for security; and to further regulate the procedures relating to inquiries; to provide for a special exemption from value-added tax; to amend the Income Tax Act, 1993, so as to delete a reference to an obsolete provision; to amend the Tax on Retirement Funds Act, 1996, so as to effect certain consequential amendments; and to amend the formula for determining the income of a fund to make provision for the taxation of foreign dividends; to amend the Uncertificated Securities Tax Act, 1998, so as to withdraw certain exemptions; and to further regulate the procedures relating to inquiries; to amend the Demutualisation Levy Act, 1998, so as to provide for exemption of the Umsobomvu Fund from income tax; to amend the Eskom Amendment Act, 1998, so as to regulate the provisions relating to the income tax exemption of Eskom; to amend the Skills Development Levies Act, 1999, so as to further regulate the exemption of certain public benefit organisations carrying on a public benefit activity of a religious or charitable nature; to effect certain consequential amendments; and to further regulate certain matters relating to representative taxpayers; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 32 of 1948, as amended by section 12 of Act 64 of 1960, section 36 of Act 77 of 1968, section 2 of Act 88 of 1974, section 2 of Act 114 of 1977, section 1 of Act 95 of 1978, section 2 of Act 106 of 1980, section 1 of Act 87 of 1982, section 1 of Act 92 of 1983, section 1 of Act 118 of 1984, section 1 of Act 81 of 1985, section 1 of Act 87 of 1988, section 1 of Act 136 of 1992, section 1 of Act 97 of 1993, section 3 of Act 37 of 1996, section 2 of Act 27 of 1997, section 1 of Act 30 of 1998, section 1 of Act 32 of 1999 and section 2 of Act 53 of 1999 5

1. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended by the deletion of subparagraph (vii) of paragraph (c) of subsection (3). 10

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2000.

Amendment of section 9C of Act 32 of 1948, as inserted by section 2 of Act 46 of 1996

2. Section 9C of the Marketable Securities Tax Act, 1948, is hereby amended— 15

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

“(b) have the same powers—

(i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and 20

(ii) relating to contempt committed during the proceedings, as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962, and for those purposes sections 84 and 85 of that Act shall apply *mutatis mutandis*; and”;

(b) by the substitution for subsections (11), (12) and (13) of the following subsections: 25

“(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present [throughout] at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry. 30

(12) Any person contemplated in subsection (9) has the right to [a representative of his choice] have a legal representative present during the time that he appears before the presiding officer. 35

(13) An inquiry contemplated in this section shall [not be public] be private and confidential and the presiding officer shall at any time on application [of] by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.”; 40

(c) by the addition of the following subsections:

“(15) Subject to subsection (16), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party. 45

(16) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him. 50

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers. 55

(17) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person contemplated in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of such inquiry.”.

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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 and section 3 of Act 32 of 1999

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

- (a) by the deletion of paragraph (bA) of subsection (1);
 (b) by the substitution for the words preceding the proviso to paragraph (c) of subsection (1) of the following words:

“a **[religious, charitable or educational institution of a public character]** public benefit organisation which is exempt from tax in terms of section **[10(1)(f)] 10(1)(cN)** of the Income Tax Act, 1962 (Act No. 58 of 1962), in respect of property acquired **[for religious, charitable or educational purposes exclusively]** by such public benefit organisation the whole, or substantially the whole, of which will be used for the purposes of one or more public benefit activity carried on by such public benefit organisation.”;

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- (c) by the deletion of paragraph (j) of subsection (1);
 (d) by the insertion after subsection (1) of the following subsection:

“(1A) No duty shall be payable in respect of the registration of any property transferred by any public benefit organisation which is exempt from tax in terms of the provisions of section 10(1)(cN) of the Income Tax Act, 1962, to any other entity which is controlled by that public benefit organisation in order to comply with the provisions of the proviso to subsection (3) of section 30 of that Act.”;

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- (e) by the deletion of subsection (13); and
 (f) by the deletion of subsection (14).

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 January 2000.

(b) Subsection (1)(b), (c), (d) and (e) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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Amendment of section 11D of Act 40 of 1949, as inserted by section 5 of Act 46 of 1996

4. Section 11D of the Transfer Duty Act, 1949, is hereby amended—

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

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“(b) have the same powers—

(i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and

(ii) relating to contempt committed during the proceedings,

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as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962, and for those purposes sections 84 and 85 of that Act shall apply *mutatis mutandis*; and”;

- (b) by the substitution for subsections (11), (12) and (13) of the following subsections:

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“(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present **[throughout]** at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in

subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to **[a representative of his choice]** have a legal representative present during the time that he appears before the presiding officer. 5

(13) An inquiry contemplated in this section shall **[not be public]** be private and confidential and the presiding officer shall at any time on application **[of]** by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), 10 exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.”; and

(c) by the addition of the following subsections:

“(15) Subject to subsection (16), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party. 15

(16) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him. 20

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking an of oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers. 25

(17) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person contemplated in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of such inquiry.”. 30

Amendment of section 15 of Act 40 of 1949, as amended by section 4 of Act 77 of 1964

5. Section 15 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (3) of the following subsection: 35

“(3) Any person who fails to comply with any provision of this section shall be guilty of an offence and liable on conviction to a fine **[not exceeding fifty rand]** or to imprisonment for a period not exceeding three months.”.

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997, section 34 of Act 34 of 1997 and section 7 of Act 53 of 1999 45

6. Section 1 of the Estate Duty Act, 1955, is hereby amended by the insertion after the definition of “company” of the following definition:

“ ‘domestic policy’ means any life policy as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), issued anywhere upon an application made or presented to a representative of an insurer (or to any person on behalf of such a representative) at any place in the Republic, excluding a life policy which has been made payable at a place outside the Republic at the request of the owner, but including any life policy issued outside the Republic which has subsequently been made payable in the Republic at the request of the owner;” . 50 55

Amendment of section 3 of Act 45 of 1955, as amended by section 2 of Act 65 of 1960, section 8 of Act 77 of 1964, section 2 of Act 81 of 1965, section 4 of Act 92 of 1971, section 3 of Act 89 of 1972, section 3 of Act 102 of 1979, section 10 of Act 106 of 1980, section 2 of Act 92 of 1983, section 4 of Act 81 of 1985, section 9 of Act 87 of 1988, section 7 of Act 97 of 1993, section 6 of Act 27 of 1997 and section 13 of Act 30 of 1998 5

7. Section 3 of the Estate Duty Act, 1955, is hereby amended by the substitution for the words preceding the proviso to paragraph (a) of subsection (3) of the following words:

“so much of any amount due and recoverable under any policy of insurance which is a ‘domestic policy’ [as defined in section 1 of the Insurance Act, 1943 (Act 27 of 1943)], upon the life of the deceased as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Commissioner to have been paid by any person who is entitled to the amount due under the policy, together with interest at six per cent per annum calculated upon such premiums or consideration from the date of payment to the date of death:”.

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 and section 14 of Act 30 of 1998 20
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8. (1) Section 4 of the Estate Duty Act, 1955, is hereby amended—

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

“(i) any [charitable, educational or religious institution of a public character] public benefit organisation which is exempt from tax in terms of section [10(1)(f)] 10(1)(cN) of the Income Tax Act, 1962 (Act No. 58 of 1962) [and any fund which has been approved by the Commissioner under the provisions of section 10(1)(fA) of that Act]; or”;

(b) by the deletion of subparagraphs (ii) and (iv) of paragraph (h).

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette* and shall apply in respect of any person who dies on or after that date. 35

Amendment of section 8D of Act 45 of 1955, as inserted by section 7 of Act 46 of 1996

9. Section 8D of the Estate Duty Act, 1955, is hereby amended— 40

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

“(b) have the same powers—

(i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and 45

(ii) relating to contempt committed during the proceedings, as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962, and for those purposes sections 84 and 85 of that Act shall apply *mutatis mutandis*; and”;

(b) by the substitution for subsections (11), (12) and (13) of the following subsections: 50

“(11) The executor of the estate of the deceased person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present [throughout] at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the executor and his representative, or 55

either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to **[a representative of his choice]** have a legal representative present during the time that he appears before the presiding officer.

(13) An inquiry contemplated in this section shall **[not be public]** be private and confidential and the presiding officer shall at any time on application **[of]** by the executor of the estate of the deceased person whose affairs are being investigated or any other person giving evidence or the person contemplated in subsection (1), exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.”; and

(c) by the addition of the following subsections:

“(15) Subject to subsection (16), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the executor of the estate of the deceased person whose affairs are investigated is a party or to which a person who had dealings with such person is a party.

(16) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him.

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers.

(17) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person contemplated in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of such inquiry.”.

Substitution of section 23 of Act 45 of 1955

10. The following section is hereby substituted for section 23 of the Estate Duty Act, 1955:

“Returns by insurers

23. Every person who carries on in the Republic any insurance business shall whenever he, on the death of any person, makes payment of any claim under any policy of insurance which is a ‘domestic policy’ **[as defined in section one of the Insurance Act, 1943 (Act 27 of 1943)]**, upon the life of that person, advise the Commissioner, in such form as the Commissioner may require, of such payment.”.

Amendment of section 28 of Act 45 of 1955, as amended by section 17 of Act 77 of 1962, section 7 of Act 81 of 1965, section 9 of Act 81 of 1985, section 12 of Act 97 of 1993 and section 8 of Act 46 of 1996

11. Section 28 of the Estate Duty Act, 1955, is hereby amended—

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

“shall be guilty of an offence and liable on conviction to a fine **[not exceeding one thousand rand]** or to imprisonment for a period not exceeding two years **[or to both such fine and such imprisonment]**.”; and

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

“shall be guilty of an offence and liable on conviction to a fine **[not exceeding R1 000]** or to imprisonment for a period not exceeding two years.”.

Fixing of rates of normal tax in terms of Act 58 of 1962

12. The rates of normal tax to be levied in terms of section 5(2) of the Income Tax Act, 1962, in respect of—

- (a) the taxable income of any person other than a company for the year of assessment ending on 28 February 2001 or 30 June 2001; 5
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2001, excluding any taxable income in respect of which the provisions of paragraph (c) apply; and
- (c) the taxable income of any company contemplated in paragraph 2(b) or (c) of Schedule 1 to this Act, for the year of assessment commencing on or after 1 April 2000 and ending during the period of twelve months ending on 31 March 2000, 10

shall be as set out in Schedule 1 to this Act.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998 and section 10 of Act 53 of 1999 15 20 25

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

- (a) by the substitution for paragraph (b) of the definition of “company” of the following paragraph:
 - “(b) any association, corporation or company incorporated under the law of any country other than the Republic or any body corporate formed or established under such law [**if such association, corporation, company or body, as the case may be, carries on business or has an office or place of business in the Republic or derives income from any source within or deemed to be within the Republic or in which any person ordinarily resident or carrying on business in the Republic is interested as a shareholder or member**]; or”;
- (b) by the deletion of paragraph (c) of the definition of “company”;
- (c) by the substitution for paragraph (d) of the definition of “company” of the following paragraph:
 - “(d) any association (not being an association referred to in paragraph (a) or (f) [**or an association to which the provisions of section 10(1)(e) apply**]) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public; or”;
- (d) by the substitution for paragraph (e) of the definition of “company” of the following paragraph:
 - “(e) any— 50
 - (i) unit portfolio comprised in any unit trust scheme in securities other than property shares managed or carried on by any company registered as a management company under section 4 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), if— 55
 - [(i)](aa) such portfolio was created on or after the date of commencement of the Unit Trusts Control Amendment Act, 1962 (Act No. 11 of 1962);
 - [(ii)](bb) such portfolio was created before that date and the relevant trust deed has after that date been amended in order to create further units in that portfolio; or 60

- (ii) arrangement or scheme carried on outside the Republic in pursuance of which members of the public are or will be invited or permitted to invest in a portfolio of a collective investment scheme, where two or more investors contribute to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; or; 5
- (e) by the substitution for the words preceding paragraph (a) of the definition of “dividend” of the following words:
 “ ‘dividend’ means any amount distributed by a company (not being [a **mutual building society or**] an institution to which section 10(1)(d) 10 applies) to its shareholders or any amount distributed out of the assets pertaining to any unit portfolio referred to in paragraph (e) of the definition of ‘company’ in this section to shareholders in relation to such unit portfolio (including, in the case of any co-operative society or company referred to in section 27, any amount distributed on or after 1 15 April 1977 to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis), and in this definition the expression ‘amount distributed’ includes—”; 20
- (f) by the insertion after paragraph (c) of the definition of “gross income” of the following paragraph:
 “(cA) any amount received by or accrued to any person who—
 (i) is a natural person;
 (ii) is or was a labour broker as defined in the Fourth Schedule (other 25 than a labour broker in respect of which a certificate of exemption has been issued in terms of that Schedule);
 (iii) is or was a personal service company as defined in the Fourth Schedule; or
 (iv) is or was a personal service trust as defined in the Fourth 30 Schedule,
as compensation for any restraint of trade imposed on such person;”;
- (g) by the insertion after paragraph (eA) of the definition of “gross income” of the following paragraph:
 “(eB) any amount received by or accrued to any person by way of any 35 distribution by any pension fund or provident fund to such person (other than any amount recoverable in terms of the provisions of section 37D of the Pension Funds Act, 1956 (Act No. 24 of 1956)), where such person or any other person from whom such person received the right to participate in such fund or distribution has during such year or any 40 previous year of assessment as an employer contributed any sum to such fund for the benefit of its employees or former employees;”;
- (h) by the substitution for paragraph (k) of the definition of “gross income” of the following paragraph:
 “(k) any amount received or accrued by way of dividends including any 45 [dividends distributed by a private company out of or by way of capitalization of any profits of such company, which in terms of section 37 of the Income Tax Act, 1941 (Act No. 31 of 1941), had previously been apportioned among its shareholders as the taxable income or the income subject to super tax of such company, and for 50 the purposes of this paragraph all dividends from sources outside the Republic received by or accrued to any person (other than a company) who is ordinarily resident in the Republic or received by or accrued to any company which is registered, managed and controlled in the Republic, shall be deemed to have been received by 55 or to have accrued to such person or company from a source within the Republic] amount determined in accordance with the provisions of section 9E in respect of any foreign dividend received by or accrued to any person who is a resident as defined in such section;”;
- (i) by the insertion after the definition of “mining operations” of the following 60 definition:
 “ ‘Minister’ means the Minister of Finance;”;

- (j) by the substitution for the definition of “prescribed rate” of the following definition:
- “ ‘prescribed rate’, in relation to any interest payable in terms of this Act, means such rate as the Minister may from time to time fix by notice in the Gazette for the purposes of— 5
- (a) **[in the case of]** interest payable to any taxpayer under the provisions of section 89quat(4) **[a rate of 10,5 per cent per annum]**; or
- (b) **[in any other [case a rate of 14,5 per cent per annum or, in either case, such other rate as the Minister of Finance may from time to time fix by notice in the Gazette] provision of this Act;]**; and 10
- (k) by the substitution for the definition of “trading stock” of the following definition:
- “ ‘trading stock’ includes— 15
- (a) anything— 15
- (i) produced, manufactured, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by him or on his behalf; or
- (ii) the proceeds from the disposal of which forms or will form part of his gross income; or 20
- (b) any consumable stores and spare parts acquired by him to be used or consumed in the course of his trade, but does not include a foreign currency option contract and a forward exchange contract as defined in section 24I(1);”.
- (2) (a) Subsection (1)(a), (b), (d) and (h) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any foreign dividend— 25
- (i) received by or accrued to any person on or after that date; or
- (ii) which accrued to the person before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any dividend declared by a company before 23 February 2000, where— 30
- (aa) such company is listed on a recognised stock exchange; or
- (bb) in any other case, the chief executive officer and—
- (A) an external auditor of the company; or 35
- (B) where a company is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant, have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000.
- (b) Subsection (1)(c) shall come into operation on 1 January 2001 and shall apply in respect of years of assessment commencing on or after that date. 40
- (c) Subsection (1)(f) and (g) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any amount received or accrued on or after that date.
- Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998 and section 11 of Act 53 of 1999** 45
- 14.** Section 4 of the Income Tax Act, 1962, is hereby amended— 50
- (a) by the substitution for paragraph (c) of the proviso to subsection (1) of the following paragraph:

“(c) the provisions of this subsection shall not be construed as preventing the Commissioner from—

- (i) disclosing to the Chief of the Central Statistical Services such information in relation to any person as may be required by such Chief in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act No. 66 of 1976), or any regulation thereunder; or
 - (ii) publishing a list of approved public benefit organisations for the purposes of the provisions of sections 18A and 30.”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) Any person who contravenes the provisions of subsection (1) or (2A) shall be guilty of an offence and liable on conviction to a fine [not exceeding R5 000] or to imprisonment for a period not exceeding two years [or to both such fine and such imprisonment].”.

Amendment of section 6 of Act 58 of 1962, as inserted by section 5 of Act 104 of 1980 and amended by section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998 and section 5 of Act 32 of 1999

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

- (a) by the substitution for the expression “R3 710” in paragraph (a) of subsection (2) of the expression “R3 800”; and
- (b) by the substitution for the expression “R2 775” in paragraph (b) of subsection (2) of the expression “R2 900”.

Amendment of section 6quat of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997 and section 12 of Act 53 of 1999

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

- (a) by the substitution for subsection (1) of the following subsections:
 - “(1) Subject to the provisions of subsection (2), there shall be deducted from the normal tax payable by any resident of the Republic or any person contemplated in section 9C(2)(b) or any shareholder who is a ‘resident’ as defined in section 9E, in whose taxable income there is included—
 - (a) any income received by or accrued to such resident or person from any country other than the Republic other than any foreign dividend contemplated in paragraph (d); or
 - (b) any proportional amount of investment income contemplated in section 9D; or
 - (c) any income payable to such resident from the Republic, where such income is deemed to be from a source within the Republic in terms of the provisions of paragraphs (d), (d)bis and (f) of section 9(1); or
 - (d) any foreign dividend contemplated in section 9E, a rebate determined in accordance with this section.
 - (1A) For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), by—
 - [(i)(aa)](a)(i) such resident of the Republic; and
 - [(bb)] (ii) any controlled foreign entity, as contemplated in section 9D, in respect of such proportional amount; or
 - [(ii)] (b) such person contemplated in section 9C(2)(b); or

- (c) (i) such shareholder in respect of any dividend contemplated in subsection (1)(d); and
- (ii) any company in respect of any profits from which such dividend is declared or deemed to have been declared; or
- (d) any company in respect of the proportional amount of any profits from which any dividend is declared or deemed to have been declared to a controlled foreign entity and which dividend relates to any proportional amount of investment income included in the income of such shareholder as contemplated in subsection (1)(b),

to the government of **[such other]** any country other than the Republic in respect of the amount of income derived from such country, which is so included in that resident's or person's or shareholder's taxable income.

[Provided that]

(1B) Notwithstanding the provisions of subsection (1A)—

- (a) the rebate **[under this subsection]** of any tax proved to be payable to the government of any other country shall not exceed an amount which bears to the total normal tax payable the same ratio as the taxable income attributable to the income derived from such country, which is so included bears to the total taxable income; and
- (b) where such sum of any taxes payable to the government of any such other country exceeds the rebate as determined in paragraph (a) **[of this proviso]** (hereinafter referred to as the excess amount), such excess amount **[(excluding so much of such excess amount relating to foreign tax paid or payable by any controlled foreign entity which distributes its profits in the form of dividends)]** may—
- (i) in the case of any excess amount which relates to any amount included in the income of any company as contemplated in paragraph (a), (c) or (d) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company after the determination of such excess amount, limited to an amount determined by applying the rate of the Secondary Tax on Companies to the profits attributable to the inclusion of the income contemplated in **[paragraph (a) of this subsection]** such paragraphs; or
- (ii) in the case of any excess amount relating to any amount included in the income of any company as contemplated in paragraph (b) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company on the distribution of any profits derived by way of dividends declared to such company by such controlled foreign entity from profits that relate to any amount of investment income so included in terms of paragraph (b), limited to an amount determined by

applying the rate of the Secondary Tax on Companies to the amount of the taxable income attributable to the inclusion of the income contemplated in such paragraph,

after the deduction of—

- [(i)](aa) any normal tax paid or payable; or 5
- [(ii)](bb) such sum of taxes payable to the government of any such other country,

whichever amount is the greater:

Provided that—

- (A) the amount of any such excess amount as exceeds the amount of any Secondary Tax on Companies as contemplated in subparagraph (i) or (ii), may— 10
 - (AA) be carried forward to the immediately succeeding year of assessment and shall be deemed to be a tax on income paid to the government of such country in such year; and 15
 - (BB) be set off against the amount of any normal tax payable by such company during such year of assessment in respect of any amount derived from such country which is included in the taxable income of such shareholder during such year, as contemplated in paragraph (a), (b), (c) or (d) of subsection (1), after any tax payable by such company to the government of such country in respect of the amount so included during such year of assessment has been set off against the amount of— 20
 - (AAA) such normal tax payable in respect of such amount of income; and 25
 - (BBB) any Secondary Tax on Companies as contemplated in subparagraph (i) or (ii) which becomes payable during such year; and
 - (B) the excess amount contemplated in this paragraph shall not be allowed to be carried forward for more than three years reckoned from the year of assessment when such excess amount was for the first time carried forward; 30
 - (c) the amount of any tax which— 35
 - (i) becomes payable to the government of any other country in respect of any amount which— 35
 - (aa) is declared to any company which is a resident as a foreign dividend which is exempt from tax in terms of section 9E(7)(e); or
 - (bb) would, but for the provisions of section 9D(9)(f), have been included in any income of such company which is a resident; and 40
 - (ii) has not been taken into account as a rebate against any normal tax payable by such company in respect of such amount previously included in his taxable income in terms of section 9D, 45
- may be deducted from any Secondary Tax on Companies which becomes payable by such company on the distribution of any profits derived by way of dividends declared to such company by any

- controlled foreign entity from profits relating to any investment income so previously included;
- (d) no rebate shall be allowed as a deduction from the tax payable by any shareholder, in respect of any tax contemplated in subsection (1A)(c)(ii) or (d), which is payable by—
- (i) any company distributing any dividend to such shareholder, if such shareholder (in the case of a company, together with any other company in a group of companies of which such company forms part) holds for his or its own benefit less than 10 per cent of the equity share capital in such company; or
- (ii) any company in respect of any profits from which the dividend is declared or deemed to have been declared, if such shareholder does not hold a qualifying interest in such company;
- (e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the shareholder has made an election as contemplated in section 9E(6).”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) For the purposes of this section—
- ‘controlled company’ means a controlled company as defined in section 9E;
- ‘controlling company’ means a controlling company as defined in section 9E;
- ‘group of companies’ means a group of companies as defined in section 9E;
- ‘qualifying interest’ means any qualifying interest as defined in section 9E;
- ‘resident of the Republic’ means—
- (a) any natural person who is ordinarily resident in the Republic; and
- (b) any person, other than a natural person, which is incorporated or has its place of effective management in the Republic.”
- (2) Subsection (1) shall be deemed to have come into operation on 23 February 2000, and applies in respect of any foreign dividend—
- (a) received by or accrued to any person on or after that date; or
- (b) which accrued to the person before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any dividend declared by a company before 23 February 2000, where—
- (i) such company is listed on a recognised stock exchange; or
- (ii) in any other case, the chief executive officer and—
- (aa) an external auditor of the company; or
- (bb) where a company is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant,
- have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000.

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 and section 14 of Act 53 of 1999

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

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

“(g) Where, during any year of assessment, any person contemplated in paragraph (e) has held a public office for less than 12 months, the amount of R2 500 referred to in the proviso to paragraph (d)(iv) and the amount determined [by the Minister] in terms of paragraph (f), shall be reduced to an amount which bears to the relevant amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), for which the office was held bears to 12 months.”;

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

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

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

“(e) If any amount which was deducted—

- (i) under the provisions of section 11(e) or section 12(1) or section 12(1) as applied by section 12(3) or the corresponding provisions of any previous Income Tax Act or section 12B or section 12C or section 14 or section 14bis or section 27(2)(d), in respect of machinery or plant which was used by the taxpayer directly in a process of manufacture, or directly in any other process carried on by him on or after 15 March 1961, which in the opinion of the Commissioner was of a similar nature; or
- (ii) in respect of machinery or plant which was used by an agricultural co-operative (as defined in section 27(9)) directly for storing or packing pastoral, agricultural or other farm products or for subjecting such products to a primary process as defined in the said section 27(9); or
- (iii) in respect of a ship or aircraft used by him for the purposes of his trade; or
- (iv) in respect of any pipeline, transmission line or cable or railway line as contemplated in section 12D,

has as a result of damage or destruction (hereinafter referred to as ‘the event’) been recovered or recouped during any year of assessment, and if the taxpayer satisfies the Commissioner—

- (i)(aa) that he has concluded or will within a period of one year (or such longer period as the Commissioner in the circumstances of the case may allow) from the date of the event conclude a contract for the acquisition by him of further new or unused machinery, [or] plant, [or a] ship, [or] aircraft, pipeline, transmission line or cable or railway line (hereinafter referred to as the ‘further asset’) to replace the aforesaid machinery, [or] plant, [or] ship, [or] aircraft, pipeline, transmission line or cable or railway line; and

[(ii)](bb) that the further asset has been or will be brought into use within a period of three years from the date of the event and will be used by him—

[(aa)](A) directly in a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature; 5

[(bb)](B) in the case of such co-operative, directly for storing or packing pastoral, agricultural or other farm products or for subjecting such products to a primary process, as defined in section 27(9); [or] 10

[(cc)](C) in the case of a ship or aircraft, directly for the purposes of the taxpayer's trade; or

(D) in the case of a pipeline, transmission line or cable or railway line in his sole business of the transportation of persons, goods, things or natural oil as defined in section 12D or the transmission of electricity or any telecommunication signal, 15

for a period of not less than five years or until the further asset is scrapped or disposed of in the ordinary course of the taxpayer's trade prior to the expiry of such period of five years, 20

the said amount shall, notwithstanding the provisions of paragraph (a) of this subsection, not be included in the income of the taxpayer for the aforesaid year of assessment: Provided that if, owing to any occurrence or because of any circumstance arising during any year of assessment the Commissioner is no longer satisfied in regard to the matters in regard to which in terms of the preceding provisions of this paragraph he is required to be satisfied, the said amount shall be included in the income of the taxpayer for the year of assessment during which such occurrence takes place or such circumstance arises.”. 25

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 March 1999. 30

(b) Subsection (1)(b) shall be deemed to have come into operation on 23 February 2000.

(c) Subsection (1)(c) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any pipeline, transmission line or cable or railway line contracted for, and the construction, installation or erection of which commenced, on or after that date. 35

Amendment of section 9C of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 27 of Act 30 of 1998

18. (1) Section 9C of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “resident” in subsection (1) of the following definition: 40

“ ‘resident’ means—

(a) any natural person who is ordinarily resident in the Republic; and

(b) any person, other than a natural person, which is incorporated, or has its place of effective management, in the Republic;” 45

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

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 and section 17 of Act 53 of 1999

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

(a) by the substitution for the definition of “investment income” in subsection (1) of the following definition: 50

“ ‘investment income’ means investment income as defined in section 9C(1) and includes any foreign dividend as defined in section 9E;”;

- (b) by the substitution for the proviso to subsection (2) of the following proviso:
 “Provided that—
- (a) the provisions of this subsection shall not apply to any amount of investment income to which the provisions of subsection (4) are applicable; and 5
- (b) the amount of any investment income received by or accrued to such entity by way of foreign dividends, shall for the purposes of this section be determined in accordance with the provisions of section 9E, as if such entity had been a resident.”;
- (c) by the addition to subsection (4) of the following proviso: 10
 “Provided that any amount of investment income received by or accrued to such person by way of foreign dividends, shall for the purposes of this section be determined in accordance with the provisions of section 9E, as if such person had been a shareholder who is a resident.”;
- (d) by the substitution for the words preceding the proviso to paragraph (a) of subsection (9) of the following words: 15
 “in respect of investment income, other than income from foreign dividends, where the foreign tax actually paid or payable without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) in any country other than the Republic, relating to the proportional amount contemplated in subsection (2) or (4), after taking into consideration any deductions or allowances under the taxation provisions of such other country determined at the ratio as contemplated in subsection (2) or (4), as the case may be, is more than 85 per cent of the normal tax payable in the Republic.”;
- (e) by the substitution for paragraph (d) of subsection (9) of the following paragraph: 25
 “(d) to any particular class of investment income which is taxable in a country which the Minister [of Finance] has identified by notice in the Gazette as a country whose tax on income is determined on a basis which is substantially the same as that of the Republic; [or]”;
 and 30
- (f) by the addition to subsection (9) of the following paragraphs: 35
 “(f) in relation to the proportional amount of investment income relating to any foreign dividend declared to or deemed to have been declared to a controlled foreign entity which is attributable to any resident, to the extent that the profits from which the dividend is declared or deemed to have been declared relate to any proportional amount of investment income which has been included in the income of such resident in terms of the provisions of this section; or 40
 (g) to the proportional amount of any investment income of any company listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or any subsidiary of such company, which is attributable to any resident by virtue of the shareholding of such resident in such company which resident, together with any connected person in relation to such resident, directly or indirectly holds less than 10 per cent of the equity share capital in such company or subsidiary.” 45
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- (2) Subsection (1) shall be deemed to have come into operation on 23 February 2000, and applies in respect of any foreign dividend—
- (a) received by or accrued to any person on or after that date; or
- (b) which accrued to the person before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any dividend declared by a company before 23 February 2000, where— 55
- (i) such company is listed on a recognised stock exchange; or
- (ii) in any other case, the chief executive officer and—
- (aa) the external auditor of the company; or 60

(bb) where a company is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant,
 have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000. 5

Insertion of section 9E in Act 58 of 1962

20. (1) The following section is hereby inserted after section 9D of the Income Tax Act, 1962:

“Taxation of foreign dividends 10

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

‘controlled company’ means a company in relation to which another company is the controlling company;

‘controlling company’, in relation to any other company, means a company which is a resident and which holds for its own benefit, whether directly or indirectly, through one or more companies in a group of companies of which all the companies in question form part, shares in such other company which constitute not less than 75 per cent of the equity share capital of the said other company; 15

‘designated country’ means a country designated by the Minister under subsection (8); 20

‘effective date’ means 23 February 2000;

‘fixed capital’ includes share capital, share premium and accumulated profits, whether of a capital nature or not;

‘foreign dividend’ means any dividend received by or which accrued to any person from any company, to the extent that the dividend is declared from profits derived by such company from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic which have not been subject to tax in the Republic, and includes the following amounts, which shall be deemed to be a dividend declared by such company to such person— 25

(a) any amount deemed to have been distributed by any company as contemplated in section 64C(3)(a), (b), (c) or (d) to such person or any resident who is a connected person in relation to such person to the extent that such company could have distributed a dividend to such person from profits derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic which have not been subject to tax in the Republic, and none of the provisions contained in section 64C(4) apply: Provided that the provisions of this paragraph shall not apply in respect of any amount distributed by any company which is being wound up or liquidated or whose corporate existence is finally terminated, out of profits of a capital nature (other than profits of a capital nature derived from the disposal by such company, on or after the effective date, of any interest in any other company with retained profits which were available for distribution by such other company to such company which would not have been excluded from the provisions of paragraph (b) had that paragraph applied); or 35

(b) any amount derived by any person from the disposal by such person of any share or interest in the fixed capital in a company, to the extent that such company or any subsidiary of such company has any undistributed profits which were derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits deemed to be from a source within the Republic which have not been subject to tax in the Republic, which were directly or indirectly available for distribution to such person: Provided that the provisions 40

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of this paragraph shall not apply in respect of the disposal of any share or other interest in the fixed capital in a company—

- (i) where such person at no time on and after the effective date held 10 per cent or more of the total equity share capital of such company; 5
- (ii) to any resident, where such resident will after such disposal hold for his own benefit at least 10 per cent of the equity share capital of such company;
- (iii) where such person retains the same effective interest in the equity share capital or fixed capital of the company as prior to the disposal: Provided that the provisions of this subparagraph shall not apply if one of the main purposes of such disposal is the avoidance, postponement or reduction of liability for any tax, duty or levy which, but for such disposal would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner; 10
- (iv) by a shareholder who acquired such shares or interest from any person who is not a resident and who is not a connected person in relation to such shareholder, to the extent that such undistributed profits were derived prior to the acquisition of the shares by such shareholder; 20
- (v) to the extent that the proceeds from the disposal have otherwise been included in the taxable income of such person; or
- (vi) where the Commissioner is satisfied that the disposal of the shares or the non-declaration of dividends by such company was not effected as part of a scheme for the purposes of avoiding the liability for tax, duty or levy, taking into account such conditions as the Minister may prescribe by regulation; 25

‘group of companies’ means a controlling company and one or more other companies which are controlled companies in relation to the controlling company; 30

‘proportionate amount of the profit’, in relation to a shareholder, means an amount which bears to the total profit, the same ratio as such shareholder’s shareholding bears to the total shareholding, and for that purpose, if there are different classes of shares— 35

- (a) the expression ‘total shareholding’ refers only to the total of the class of shares of which such shareholding is part; and
- (b) the expression ‘total profits’ means the total profits attributable to such class of shares;

‘qualifying interest’ of any person means— 40

- (a) any direct interest of at least 10 per cent held by such person in the equity share capital of any company; and
- (b) any direct interest of at least 10 per cent held by any company contemplated in paragraph (a) in the equity share capital of any other company, which other company shall for the purposes of this definition be deemed to be a company contemplated in paragraph (a) in which such person holds a direct interest of at least 10 per cent; 45

‘resident’ means a resident as defined in section 9C(1).

(2) Any foreign dividend received by or accrued to a resident shall for the purposes of the definition of ‘gross income’ in section 1, be deemed to have been received by or to have accrued to such resident from a source within the Republic. 50

(3) Subject to subsection (7), where during any year of assessment any foreign dividend is received by or accrues to any resident, the amount to be included in the gross income of such resident for such year of assessment in terms of paragraph (k) of the definition of 'gross income' in section 1, shall—

(a) if such resident—

- (i) holds for his own benefit; or
- (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,

at least 10 per cent of the equity share capital in the company declaring the dividend, be the proportionate amount of the profit from which the dividend is distributed, before taking into account any foreign tax on income imposed in respect of such profit and any withholding tax paid in respect of such dividend: Provided that—

(aa) unless such resident proves otherwise in such manner and such form as the Commissioner may prescribe, the dividend shall be deemed to have been distributed from the profits most recently derived and available for distribution; and

(bb) where such company derived its profits by way of dividends received or accrued and by way of other sources of profits, the dividend shall be deemed to have been declared on a proportionate basis from such dividends and other sources of profits; or

(b) if such resident—

- (i) does not hold for his own benefit; or
- (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,

at least 10 per cent of the equity share capital in the company declaring the dividend, be the amount of such dividend declared before taking into account the amount of any withholding tax paid in respect of such dividend.

(4) In determining the proportionate amount of the profit to be included in the income of any resident in terms of subsection (3)(a), there shall be taken into account any profits derived by any other company in which the company distributing the dividend has an interest and which have been distributed to such company in the form of dividends, if the resident has a qualifying interest in such other company: Provided that—

(a) unless such resident proves otherwise in such manner and such form as the Commissioner may prescribe, the dividend shall be deemed to have been distributed by such other company from the profits most recently derived and available for distribution; and

(b) where such other company derived its profits by way of dividends received or accrued to such company and by way of other sources of profits, the dividend shall be deemed to have been declared by such other company on a proportionate basis from such dividends and other sources of profits.

(5) For the purposes of subsection (3)(b), where—

(a) any dividend is declared by a company to any unit portfolio referred to in paragraph (e)(i) of the definition of 'company' in section 1; and

(b) such dividend is distributed by such unit portfolio by way of a dividend, or a portion of a dividend, to persons who have become entitled to such dividend by virtue of their being registered as holders of units in such unit portfolio,

such dividend contemplated in paragraph (a) shall be deemed to have been declared by such company directly to such holders of units.

(6) Any resident who receives a foreign dividend or to whom a foreign dividend accrues may, notwithstanding the provisions of subsection (3), in respect of any year of assessment elect that the amount of such dividend to be included in the gross income of such resident shall—

- (a) if such resident— 5
- (i) holds for his own benefit; or
 - (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,
- at least 10 per cent of the equity share capital in the company declaring such dividend, be the amount of the profits from which such dividend is declared after taking into account any foreign tax on income imposed in respect of such profits and any withholding tax paid in respect of such dividend; or 10
- (b) if such resident— 15
- (i) does not hold for his own benefit; or
 - (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,
- at least 10 per cent of the equity share capital in the company declaring such dividend, be the amount of such dividend after taking into account any withholding tax paid in respect of such dividend, and such election shall apply in respect of all foreign dividends received by or accrued to such resident during the year of assessment in respect of which the election was made. 20 25
- (7) There shall be exempt from tax any foreign dividend declared or deemed to have been declared by—
- (a) any company which is a resident of the Republic, which during—
- (i) the entire period of existence of such company; or
 - (ii) each of the three years of assessment preceding the year of assessment during which such dividend is declared or deemed to have been declared,
- whichever period is shorter, derived 75 per cent or more of its total receipts or accruals from a source within the Republic or deemed to be from a source within the Republic and which was subject to tax in the Republic; 30 35
- (b) any company incorporated in the Republic out of profits derived—
- (i) by way of dividends which accrued to such company prior to the effective date;
 - (ii) by such company through a branch outside the Republic— 40
 - (aa) if such profits were repatriated to the Republic prior to the effective date; or
 - (bb) in any other case, if such branch is situated in a designated country and the profit from which the dividend is distributed is subject to tax at a rate of at least 27 per cent without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment); 45
- (c) any company listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), to a resident who, together with any connected person in relation to such resident, does not hold at least 10 per cent of the equity share capital of such company, if more than 10 per cent of the equity share capital in such company is at the time of the declaration of such dividend held collectively by residents: Provided that where such company was not listed on such stock exchange on the effective date, the exemption 50 55

shall apply only upon approval by the Commissioner, which approval the Commissioner may grant on application by such company, having regard to—

- (i) the fact whether or not the profits of such company were generated in a designated country; and 5
- (ii) the tax rate at which the profits from which the dividend was declared was or will be taxed;
- (d) any company, which is distributed directly or indirectly to a resident who holds a qualifying interest in such company, to the extent that the profits from which the dividend is declared— 10
 - (i) were generated in a designated country; and
 - (ii) are or will be subject to tax at a rate of at least 27 per cent without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment); or 15
- (e) any company to the extent that the profits from which the dividend is distributed—
 - (i) relate to any amount of investment income which has or will be included in the income of the shareholder of such company in terms of section 9D; or 20
 - (ii) have or will be included in the taxable income of such company in terms of this Act; or
 - (iii) have otherwise been included in the taxable income of the shareholder in terms of paragraph (a) of the definition of “foreign dividend”. 25

(8) The Minister may, by notice in the *Gazette*, designate countries which—

- (a) have entered into an agreement with the Republic for the avoidance of double taxation and where such agreement is in force; 30
- (b) have a tax on income that is determined on a basis which is substantially the same as that of the Republic;
- (c) have a statutory rate of tax on income of companies of at least 27 per cent without any right of recovery of such tax by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment); and 35
- (d) comply with any other requirement which the Minister may prescribe by regulation.

(9) The discretion exercised by the Commissioner in terms of this section shall be subject to objection and appeal.”. 40

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000, and applies in respect of any foreign dividend—

- (a) received by or accrued to any person on or after that date; or
- (b) which accrued to the person before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any dividend declared by a company before 23 February 2000, where— 45
 - (i) such company is listed on a recognised stock exchange; or
 - (ii) in any other case, the chief executive officer and— 50
 - (aa) an external auditor of the company; or
 - (bb) where a company is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant, have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000. 55

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998 and section 18 of Act 53 of 1999

21. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion of paragraphs (cB), (cC), (cD), (cF), (cI), (cJ), (f) and (fA) of subsection (1);
 - (b) by the deletion of paragraph (cK) of subsection (1);
 - (c) by the insertion after paragraph (cM) of subsection (1) of the following paragraph:

“(cN) the receipts and accruals of any public benefit organisation which has been approved by the Commissioner in terms of section 30(3);”;
 - (d) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) the receipts and accruals of any **[terminating building society]**—

 - (i) pension fund, provident fund, retirement annuity fund; or
 - (ii) benefit fund **[mutual savings bank]**, mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers), local publicity association or non-proprietary stock exchange approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation; or
 - (iii) company, society or other association of persons established to—
 - (aa) provide social and recreational amenities or facilities for the members of such company, society or other association; or
 - (bb) promote the common interests of persons (being members of such company, society or association of persons) carrying on any particular kind of business, profession or occupation, approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation;”;
 - (e) by the substitution for subparagraph (iii) of paragraph (hA) of subsection (1) of the following subparagraph:

“(iii) for the purposes of this paragraph, so much of any dividend as has been distributed by any unit portfolio constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section 1 out of interest derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provisions of paragraph (iA), shall be deemed to be interest;”;
 - (f) by the substitution for subparagraph (xv) of paragraph (i) of subsection (1) of the following subparagraph:

“(xv) in the case of any taxpayer who is a natural person, so much of the aggregate of any dividends and interest received by or accrued to him which **[is]** are not otherwise exempt from tax, as does not during the year of assessment exceed **[the amount of R2 000]**—

- (aa) in the case of any person who was or, had he lived would have been, at least 65 years of age on the last day of the year of assessment, the amount of R4 000; or
- (bb) in any other case, the amount of R3 000:
 Provided that the amount of the exemption from tax shall—
- (A) first apply in respect of any foreign dividends contemplated in section 9E received or accrued which would not otherwise have been exempt from tax; and
- (B) in so far as such amount exceeds the amount of such foreign dividends, apply in respect of such interest and other taxable dividends received or accrued;”;
- (g) by the deletion of subparagraph (xvi) of paragraph (i) of subsection (1);
- (h) by the substitution for paragraph (iA) of subsection (1) of the following paragraph:
 “(iA) in the case of any unit portfolio referred to in paragraph (e)(i) of the definition of ‘company’ in section 1, so much of the interest or foreign dividends contemplated in section 9E received by or accrued to such unit portfolio as has been distributed, or as the Commissioner is satisfied will be distributed, by way of a dividend or a portion of a dividend, to persons who have become entitled to such dividend by virtue of their being registered as holders of units in such unit portfolio on a date falling on or after the first day of April, 1971;”;
- (i) by the addition of the word “or” at the end of subitem (B) of item (bb) of subparagraph (i) of paragraph (k) of subsection (1);
- (j) by the addition to subparagraph (i) of paragraph (k) of subsection (1) of the following item:
 “(dd) to the amount of any foreign dividend contemplated in section 9E received by or accrued to any resident as defined in section 9C;”;
- (k) by the deletion of subparagraph (xii) of paragraph (t) of subsection (1).
- (2) (a) Subsection (1)(a), (c) and (d) shall come into operation on a date fixed by the President by proclamation in the *Gazette*: Provided that any company, society, trust, institution, union, chamber, exchange, other association of persons or fund whose receipts and accruals were exempt from tax in terms of the provisions of paragraphs (cB), (cC), (cD), (cF), (cI), (cJ), (f) and (fA) of section 10(1) of the Income Tax, 1962, prior to the amendment thereof by this section, which company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section 10(1)(d)(ii) or (iii) or section 30 of that Act within a period of 12 months after the date so fixed by the President, or submit a written undertaking as provided for in the said section 30 within such period, shall continue to enjoy exemption until written notification by the Commissioner of his decision in terms of the said section 10(1)(d)(ii) or (iii) or section 30: Provided further that any such company, society, trust, institution, union, chamber, exchange, other association or fund, shall subject to the provisions of the said section 30—
- (i) within a period of five years after the date so fixed by the President; or
- (ii) at such time as any amendment to the constitution or other written document in terms of which it has been established is effected,
- whichever is sooner, submit to the Commissioner a copy of such constitution or other written instrument in terms of which it has been established.
- (b) Subsection (1)(b) and (k) shall be deemed to have come into operation on 1 January 2000 and shall apply in respect of any year of assessment commencing on or after that date.
- (c) Subsection (1)(f) and (g) shall be deemed to have come into operation on 1 March 2000, and shall apply in respect of any year of assessment commencing on or after that date.
- (d) Subsection (1)(e), (h), (i) and (j) shall be deemed to have come into operation on 23 February 2000, and apply in respect of any foreign dividend—

- (i) received by or accrued to any person on or after that date; or
- (ii) which accrued to the person before 23 February 2000, but which is received on or after that date:

Provided that the provisions of this paragraph shall not apply in respect of any dividend declared by a company before 23 February 2000, where— 5

- (aa) such company is listed on a recognised stock exchange; or
- (bb) in any other case, the chief executive officer and—
 - (A) an external auditor of the company; or
 - (B) where a company is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant, 10
have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000.

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 and section 20 of Act 53 of 1999 15 20 25

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

- (a) by the insertion after paragraph (c) of the following paragraph:
 - “(cA) an allowance in respect of any amount actually incurred by such person 30
in the course of the carrying on of his trade, as compensation in respect of any restraint of trade imposed on any other person who—
 - (i) is a natural person;
 - (ii) is or was a labour broker as defined in the Fourth Schedule (other than a labour broker in respect of which a certificate of exemption has been issued in terms of such Schedule); 35
 - (iii) is or was a personal service company as defined in the Fourth Schedule; or
 - (iv) is or was a personal service trust as defined in the Fourth Schedule, to the extent that such amount constitutes or will constitute income of the person to whom it is paid: Provided that the amount allowed to be deducted under this paragraph shall not exceed for any one year the lesser of— 40
 - (aa) so much of such amount so incurred as is equal to such amount divided by the number of years, or part thereof, during which the restraint of trade shall apply; or 45
 - (bb) one-third of such amount so incurred;”;
- (b) by the substitution for the words preceding the proviso to paragraph (o) of the following words:
 - “save as provided in paragraph 12(2) of the First Schedule, an allowance 50
in respect of—
 - (i) any building (or portion thereof) referred to in section 13(1) or (4) or section 13bis(1) or section 27(2)(b) or of any improvements (or portion thereof) to such building; or
 - (ii) [of] any shipbuilding structure referred to in section 13(8) or of any 55
improvement to such shipbuilding structure; or

- (iii) **[of]** any residential unit referred to in section 13*ter*; or
- (iv) **[of]** any permanent work, road pavement or ancillary service referred to in section 24G; or
- (v) **[of]** any machinery, plant, implements, utensils or articles used by the taxpayer for the purposes of his trade; or 5
- (vii) any transmission line or cable or railway line referred to in section 12D, 10
 which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such building (or portion thereof), **[or such]** improvements (or portion thereof) to such building, **[or such]** shipbuilding structure, **[or such]** improvements to such shipbuilding structure, **[or such]** residential unit, **[or such]** permanent work, road pavement, **[or]** ancillary service, **[or such]** machinery, plant, implements, utensils, **[or]** articles, transmission line or cable or railway line over the total amount arrived at by adding all the allowances made in respect thereof under the provisions of paragraph (e) of this section, or section 12(1), or section 12(1) as applied by section 12(3), or section 12A(2), or section 12B, or section 12C, or section 12D, or section 13(1), or section 13(1) as applied by section 13(4) or (8), or section 13*bis*(1), (2) or (3), or section 13*ter*(2) or (3), or section 14(1)(a) or (b), or the corresponding provisions of any previous Income Tax Act, or section 14*bis*(1)(a), (b) or (c), or section 24F, or section 24G, or section 27(2)(b) or (d), to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such building, shipbuilding structure, improvements, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils **[or]** articles, transmission line or cable or railway line:”;
- (c) by the substitution for paragraphs (i) and (ii) of the proviso to paragraph (o) of the following paragraphs: 30
- “(i) no allowance shall be made in the case of any such building (or portion thereof), **[or of any such]** improvements (or portion thereof) to such building, **[or of any such]** shipbuilding structure, **[or of any such]** improvements to such shipbuilding structure, **[or of any such]** residential unit, transmission line or cable or railway line which has or have been scrapped within a period of ten years from the date of erection or purchase, or in the case of any such residential unit in respect of which any amount has fallen for inclusion in the taxpayer’s income under the provisions of section 13*ter*(7)(a), whether in the current or in any previous year of assessment; 35 40
- (ii) for the purposes of this paragraph the cost of any building (or portion thereof), **[or of any]** improvements (or portion thereof) to any building, **[or of any]** shipbuilding structure, **[or of any]** improvements to any shipbuilding structure, **[or of any such]** residential unit, transmission line or cable or railway line shall be deemed to be that portion of the actual cost on which the allowance in question was made;”;
- (d) by the substitution for subparagraph (B) of paragraph (dd) of the proviso to paragraph (w) of the following subparagraph: 45
- “(B) the only benefit payable under the policy is a benefit payable within a period fixed in such policy upon or by reason of the death or disablement of the employee or director whose life is insured under the policy or the policy is a **[personal accident] disability** policy as defined in section 1 of the Long-term Insurance Act, [1943 (Act 27 of 1943)] 1998 (Act No. 52 of 1998); or”;
- (e) by the substitution for paragraph (ff) of the proviso to paragraph (w) of the following paragraph: 55
- “(ff) no deduction shall be made from the income of any taxpayer in respect of premiums paid by him under any policy of insurance of which he is the owner on the life of an employee of that taxpayer or, where the taxpayer is a company, of a director or employee of that company, except in so far 60

as an allowance may be made under this paragraph or, in the case of a policy which is not a life policy or a **[personal accident] disability** policy as defined in section 1 of the Long-term Insurance Act, [1943] 1998, a deduction which may, in appropriate circumstances, be made under paragraph (a) or (b) of this section;”.

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(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any amount incurred on or after that date.

(b) Subsection (1)(b) and (c) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any transmission line or cable or railway line contracted for and the construction, erection or installation of which commenced on or after that date.

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Insertion of section 12D in Act 58 of 1962

23. (1) The following section is hereby inserted after section 12C of the Income Tax Act, 1962:

“Deduction in respect of certain pipelines, transmission lines and railway lines

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

‘affected asset’ means any—

- (a) pipeline used for the transportation of natural oil;
- (b) line or cable used for the transmission of electricity;
- (c) telephone line or cable used for the transmission of any signal for the purposes of telecommunication; and

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(d) railway line used for the transportation of persons, goods or things, contracted for on or after the effective date, and the construction, erection or installation of which commenced on or after such date, and includes any earthworks or supporting structures forming part of such pipeline, transmission line or cable or railway line;

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‘effective date’ means 23 February 2000; and

‘natural oil’ means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth’s crust and includes any refined by-products of such liquid or solid hydrocarbon or combustible gas.

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(2) In respect of any new and unused affected asset which—

- (a) is owned by the taxpayer and is brought into use for the first time by such taxpayer on or after the effective date; and
- (b) is used directly by such taxpayer—
 - (i) in the production of his income; and
 - (ii) in carrying on his sole business of—
 - (aa) the transportation of persons, goods, things or natural oil; or
 - (bb) the transmission of electricity or any telecommunication signal,

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there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of such asset.

(3) The allowance contemplated in subsection (2) shall not for any one year exceed—

- (a) 10 per cent of the cost incurred in respect of any asset contemplated in paragraph (a) of the definition of ‘affected asset’; or
- (b) 5 per cent of the cost incurred in respect of any asset contemplated in paragraph (b), (c) or (d) of the definition of ‘affected asset’.

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(4) For the purposes of this section the cost to a taxpayer of any affected asset shall be deemed to be—

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- (a) where such asset has been acquired to replace any asset which has been damaged or destroyed, the actual cost of such asset, less any amount which has been recovered or recouped in respect of the damaged or destroyed asset which has been excluded from the

- taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment; or
- (b) in any other case, the lesser of—
- (i) the actual cost of acquisition of the asset incurred by the taxpayer; or
 - (ii) the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset (including the direct cost of the installation or erection thereof).
- (5) No deduction shall be allowed under this section in respect of any affected asset which has been disposed of by the taxpayer during any previous year of assessment.
- (6) The deductions which may be allowed in terms of this section and any other provision of this Act in respect of the cost of any affected asset shall not in the aggregate exceed the amount of such cost."

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any pipeline, transmission line or cable or railway line contracted for and the construction, installation or erection of which commenced on or after that date.

Substitution of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970 and substituted by section 16 of Act 96 of 1981 and amended by section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1988, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991 and section 11 of Act 36 of 1996

24. (1) The following section is hereby substituted for Section 18A of the Income Tax Act, 1962:

“Deduction of donations to certain public benefit organisations

- 18A.** (1) There shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations in cash or in kind made by such taxpayer and actually paid or transferred during the year of assessment to—
- (a) any—
 - (i) public benefit organisation approved by the Commissioner under section 30; or
 - (ii) institution, board or body contemplated in section 10(1)(cA)(i), which carries on in the Republic any public benefit activity which is determined by the Minister by notice in the *Gazette* for the purposes of this section, a copy of which shall be laid upon the table in Parliament;
 - (b) any public benefit organisation approved by the Commissioner under section 30, which—
 - (i) provides funds solely to any public benefit organisation, institution, board or body contemplated in paragraph (a); and
 - (ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds received by or accrued to such organisation by way of donations which qualified for a deduction in terms of this section,
- as does not exceed the greater of—
- (aa) five per cent of the taxable income of the taxpayer as calculated before allowing any deduction under this section or section 18; or

(bb) R1 000.

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body concerned, on which the following details are given, namely—

- (a) the reference number of the public benefit organisation, institution, board or body issued by the Commissioner for the purposes of this section;
- (b) the date of the receipt of the donation;
- (c) the name of the public benefit organisation, institution, board or body which received the donation, together with an address to which enquiries may be directed in connection therewith;
- (d) the name and address of the donor;
- (e) the amount of the donation or the nature of the donation (if not made in cash);
- (f) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board or body concerned.

(3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, the amount of such deduction shall be deemed to be an amount equal to—

- (a) where such property constitutes trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or
- (b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or
- (c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or
- (d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the cost to the taxpayer of such property.

(4) The provisions of subsections (9) and (10) of section 30 shall apply *mutatis mutandis* in respect of any institution, board or body contemplated in subsection (1)(a).

(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board or body has with intent—

- (a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board or body was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board or body for the purposes not covered by such objects; or

(b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to such organisation, institution, board or body by such taxpayer,

the Commissioner may by notice in writing addressed to that person direct that donations to such fund shall not qualify for deduction under the provisions of this section in respect of any year of assessment specified in such notice, and any claim by any taxpayer for such deduction shall accordingly be disallowed.”

(2) Subsection (1) shall in so far as it—

(a) determines the limit of the deduction as contemplated in section 18A(1), be deemed to have come into operation on 1 March 2000, and shall apply in respect of years of assessment commencing on or after that date; and

(b) amends the rest of section 18A, come into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) The public benefit activities determined by the Minister of Finance by notice in the *Gazette* as contemplated in section 18A(1)(a) of the Income Tax Act, 1962, shall be incorporated into that Act within a period of 12 months after the date fixed by the President in terms of subsection (2)(b).

Repeal of section 19 of Act 58 of 1962, as amended by section 15 of Act 90 of 1962, section 6 of Act 6 of 1963, section 17 of Act 88 of 1965, section 17 of Act 88 of 1971, section 14 of Act 90 of 1972, section 18 of Act 85 of 1974, section 14 of Act 104 of 1980, section 17 of Act 96 of 1981, section 15 of Act 91 of 1982, section 17 of Act 94 of 1983, section 17 of Act 121 of 1984, section 12 of Act 96 of 1985, section 12 of Act 65 of 1986, section 4 of Act 108 of 1986, section 13 of Act 85 of 1987, section 18 of Act 101 of 1990, section 21 of Act 129 of 1991 and section 33 of Act 30 of 1998

25. (1) Section 19 of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2000, and shall apply in respect of any year 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 191 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995 and section 15 of Act 28 of 1997

26. Section 20 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following proviso:

“Provided that there shall not be set off against any amount distributed to such person by any pension fund or provident fund which is included in the gross income of such person in terms of paragraph (eB) of the definition of ‘gross income’ in section 1, any—

(a) balance of assessed loss; or

(b) ‘assessed loss’ as defined in subsection (2) incurred in such year before taking into account any amount of such distribution.”

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 and section 25 of Act 53 of 1999

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

- (a) by the substitution for subsection (5) of the following subsection:
 “(5) No person may for the purpose of determining the cost price of any trading stock, adopt the basis of trading stock valuation whereunder the last item of any class of trading stock acquired by him on any date is deemed to be the first item of that class of trading stock disposed of by him on or after that date.” 5
- (b) by the substitution for paragraph (c) of subsection (5A) of the following paragraph:
 “(c) the last-mentioned company contemplated in paragraph (a) is entitled to a deduction as contemplated in subsection (3B), **[or a LIFO reserve as contemplated in subsection (5)(d) has been determined in relation to such last-mentioned company]**”; and 10
- (c) by the substitution for the words following on paragraph (c) of subsection (5A) of the following words:
 “the Commissioner may direct that, subject to such conditions as he may impose, the said two companies shall for the purposes of subsection (3B) **[or paragraphs (d) and (e) of subsection (5), as the case may be]** be regarded as being one company.” 15
- (2) Subsection (1) shall be deemed to have come into operation on 1 July 2000, and shall apply in respect of any year of assessment commencing on or after that date. 20

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 and section 15 of Act 21 of 1994

28. (1) Section 23 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for paragraph (d) of the following paragraph: 25
 “(d) any tax, duty, levy, interest or penalty imposed under this Act, any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and any interest or penalty payable in consequence of the late payment of any tax, duty or levy payable under any Act administered by the Commissioner, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), **[and]** the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), and the Skills Development Levies Act, 1999 (Act No. 9 of 1999);”; and 30
- (b) by the addition of the following paragraphs: 35
 “(k) any expense incurred by—
 (i) a labour broker as defined in the Fourth Schedule, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the said Schedule;
 (ii) a personal service company as defined in the said Schedule; or
 (iii) a personal service trust as defined in the said Schedule, other than any expense which constitutes an amount paid or payable to any employee of such labour broker, company or trust for services rendered by such employee, which is or will be taken into account in the determination of the taxable income of such employee; 40
 (l) any expense incurred in respect of the payment of any restraint of trade, except as provided for in section 11(cA).” 45
- (2) (a) Subsection (1)(a) shall come into operation on 1 April 2000 and shall apply in respect of any year of assessment commencing on or after that date.
- (b) Subsection (1)(b) shall— 50
 (i) in so far as it adds paragraph (k), be deemed to have come into operation on 1 April 2000, and shall apply in respect of any expense incurred on or after that date; and
 (ii) in so far as it adds paragraph (l), be deemed to have come into operation on 23 February 2000, and shall apply in respect of any expense incurred on or after that date. 55

Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991 and amended by section 16 of Act 21 of 1994

29. Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Where, but for the provisions of this subsection, an amount— 5
 (a) qualifies or has qualified for a deduction or an allowance; or
 (b) is otherwise taken into account in determining the taxable income of any person,
 under more than one provision of this Act, [a deduction or allowance in respect of] such amount or any portion thereof, shall not be allowed or taken 10
into account more than once as a deduction or allowance in the determination of the taxable income of any person.”.

Substitution of section 23F of Act 58 of 1962, as inserted by section 17 of Act 21 of 1994

30. (1) The following section is hereby substituted for section 23F of the Income Tax Act, 1962: 15

“Acquisition or disposal of trading stock

23F. (1) Where any taxpayer has during any year of assessment incurred expenditure for the acquisition of trading stock which was neither disposed of by him during such year nor held by him at the end of such year, any deduction which may be allowed to him under the provisions of section 11(a) or (b) in respect of such expenditure shall not be allowed in such year, but such expenditure shall for the purposes of such provisions be deemed to have been incurred by him in the first subsequent year of assessment in which— 25

(a) such trading stock is disposed of by him;
 (b) the value of such trading stock falls to be included in his income under the provisions of section 22(1); or
 (c) it is shown by him that by reason of the loss or destruction of such trading stock or the termination of the agreement in terms of which such trading stock was acquired by him or for any other reason, such trading stock will neither be disposed of nor held by him, 30
to the extent that such expenditure has actually been paid by such taxpayer.

(2) Where any taxpayer has during any year of assessment disposed of any trading stock in the ordinary course of his trade for any consideration the full amount of which will not accrue to him during such year of assessment and any expenditure incurred in respect of the acquisition of such trading stock was allowed as a deduction under the provisions of section 11(a) or (b) during such year or any previous year of assessment, the amount of such expenditure so allowed as a deduction shall be deemed to have been recovered or recouped by such taxpayer and be included in the income of the taxpayer for the year of assessment during which such trading stock was so disposed of, and there shall be allowed to be deducted in— 35

- (a) such year, so much of such expenditure which bears to the full amount of such expenditure, the same ratio as the amount of such consideration which has accrued to the taxpayer during such year bears to the full amount of such consideration; 45
 (b) any subsequent year of assessment, so much of such expenditure which bears to the full amount of such expenditure, the same ratio as the amount of such consideration which has accrued to the taxpayer 50

- during such subsequent year bears to the full amount of such consideration; or
- (c) any year of assessment during which it is shown by such taxpayer that the consideration will never accrue to him, so much of such expenditure as has not been allowed as a deduction in terms of the provisions of paragraph (a) or (b), to the extent that such expenditure was actually paid. 5
- (3) Where—
- (a) any taxpayer has during any year of assessment in the ordinary course of his trade disposed of any right or interest in any asset which constitutes trading stock which has the effect that the remaining right or interest in such asset held and not disposed of will not be included in trading stock at the end of such year; and 10
- (b) any expenditure incurred in respect of the acquisition of such asset was allowed as a deduction under the provisions of section 11(a) or (b) or was otherwise taken into account during such year or any previous year of assessment, 15
- there shall be deemed to have been recovered or recouped by such taxpayer and be included in the income of such taxpayer for such year of assessment, so much of such expenditure as relates to the remaining right or interest contemplated in paragraph (a).” 20

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Insertion of section 23H in Act 58 of 1962

31. (1) The following section is hereby inserted after section 23G of the Income Tax Act, 1962: 25

“Limitation of certain deductions

- 23H.** (1) Where any person has during any year of assessment actually incurred any expenditure (other than expenditure incurred in respect of the acquisition of any trading stock)—
- (a) which is allowable as a deduction in terms of the provisions of section 11(a), (b), (c) or (d); and 30
- (b) in respect of goods, services or any other benefit, all of which will not be supplied or rendered to such person, or the full benefit of which such person will not become entitled to during such year of assessment, 35
- the amount of the expenditure which shall be allowable as a deduction in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of—
- (i) goods to be supplied, so much of the expenditure as relates to the goods actually supplied to such person in such year of assessment; or 40
- (ii) services to be rendered, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such services are rendered bears to the total number of months during which such services will be rendered; or 45
- (iii) any other benefit to which such person will become entitled, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will be entitled to such benefit bears to the total number of months during which such person will be entitled to such benefit: 50
- Provided that the provisions of this section shall not apply—
- (aa) where all the goods or services are to be supplied or rendered within six months after the end of the year of assessment during which the expenditure was incurred, or such person becomes entitled to the full

- benefit in respect of which the expenditure was incurred within such period; or
- (bb) where the aggregate of all amounts of expenditure incurred by such person, which would otherwise be limited by this section, does not exceed R50 000; or
- (cc) to any expenditure to which the provisions of section 24I, 24J, 24K or 24L apply; or
- (dd) to any expenditure actually paid in respect of any unconditional liability to pay an amount imposed by legislation.

(2) If the Commissioner is in any case satisfied that the apportionment of the expenditure in accordance with subsection (1) does not reasonably represent a fair apportionment of such expenditure in respect of the goods, services or benefits to which it relates, he may direct that such apportionment be made in such other manner as to him appears fair and reasonable.

(3) Notwithstanding the provisions of subsections (1) and (2), where it is during any year of assessment shown by any person that—

- (a) the goods or services in respect of which the expenditure is incurred will never be received by or be rendered to such person; or
- (b) such person will never become entitled to such other benefit in respect of which any expenditure is incurred,
- such expenditure shall be allowed in such year, to the extent that such expenditure has been actually paid by such person.

(4) The exercise by the Commissioner of his discretion contemplated in subsection (2) shall be subject to objection and appeal.”.

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any expenditure incurred on or after that date.

Repeal of section 24B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1978 and substituted by section 13 of Act 104 of 1979 and amended by section 20 of Act 113 of 1993

32. Section 24B of the Income Tax Act, 1962, is hereby repealed.

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 and section 19 of Act 21 of 1994

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

- (a) by the deletion of subsections (1), (1A), (1B) and (1C);
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) Nothing in this section contained shall be construed as relieving any taxpayer from the obligation to render returns of any income derived otherwise than from the carrying on of [long-term or] short-term insurance business or in the form of dividends [(notwithstanding the inclusion of such dividends or of a portion thereof in the gross amounts referred to in subsection (1))] or from any liability for taxation in respect of any taxable income so derived or as depriving the taxpayer of the right to set off against the taxable income derived from the business of insurance any loss incurred in respect of any other business or any balance of loss so incurred which the taxpayer would be entitled to set off under the provisions of section 20.”;
- (c) by the deletion of the definition of “long-term insurance business” in subsection (4);
- (d) by the substitution for the definition of “short-term insurance business” in subsection (4) of the following definition:

“ ‘short-term insurance business’ means any short-term insurance business [**other than long-term insurance business**] as defined in the Short-term Insurance Act, 1998 (Act No. 53 of 1998).”

Amendment of section 28bis of Act 58 of 1962, as inserted by section 19 of Act 88 of 1965 and amended by section 25 of Act 89 of 1969, section 25 of Act 85 of 1974, section 18 of Act 113 of 1977 and section 23 of Act 94 of 1983 5

34. Section 28bis of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) that at the time the arrangement was implemented, all the issued shares of the subsidiary were held for its own benefit by the foreign company or a company which was incorporated, managed and controlled outside the Republic and was controlled by or controlled the foreign company, [**or that the arrangement was implemented in order to meet the requirements of section 3quat of the Insurance Act, 1943 (Act 27 of 1943)**]” 10

Insertion of section 30 in Act 58 of 1962 15

35. (1) The following section is hereby inserted after section 29A of the Income Tax act, 1962:

“Public benefit organisations

30. (1) For the purposes of this Act—
‘public benefit activity’ means— 20
(a) any activity determined by the Minister in terms of subsection (2); and
(b) the providing of funds to—
(i) any public benefit organisation which has been approved in terms of this section;
(ii) any institution, board or body contemplated in section 10(1)(cA)(i), of which at least 75 per cent of its resources are applied in the furtherance of a public benefit activity contemplated in paragraph (a); or 25
(iii) any association of persons carrying on one or more such public benefit activity in the Republic: 30
‘public benefit organisation’ means any organisation of a public character—
(a) which is a company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons; and 35
(b) of which the sole object is—
(i) subject to the provisions of subsection (3)(b)(iv), to carry on one or more public benefit activities in a non-profit manner;
(ii) to carry out all such activities (or substantially the whole thereof) in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise. 40
(2) (a) The Minister shall, by notice in the *Gazette*, determine any activity which is of a philanthropic and benevolent nature, having regard to the needs, interests and well-being of the general public for the purposes of this section. 45
(b) A copy of the notice contemplated in paragraph (a) shall be laid upon the Table in Parliament as soon as practicable.
(3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which—
(a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object; 50
(b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is— 55

- (i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation;
- (ii) prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, or to invest such funds—
- (aa) with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);
- (bb) in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
- (cc) in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations:
- Provided that the provisions of this subparagraph shall not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance;
- (iii) required on dissolution to transfer its assets to any similar public benefit organisation which has been approved in terms of this section;
- (iv) prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that—
- (aa) the gross income derived from such business undertaking or trading activity does not exceed the greater of—
- (A) 15 per cent of the gross receipts of such public benefit organisation; or
- (B) R25 000;
- (bb) the undertaking or activity is—
- (A) integral and directly related to the sole object of such public benefit organisation; and
- (B) carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;
- (cc) the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in item (bb), is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
- (dd) the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—
- (A) the scope and benevolent nature of the undertaking or activity;
- (B) the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;
- (C) the profitability of the undertaking or activity; and
- (D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;

- (v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
- (vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;
- (c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- (d) has not paid any remuneration to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- (e) complies with such reporting requirements as may be determined by the Commissioner;
- (f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph (b)(iii) of the definition of 'public benefit activity', has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and
- (g) has, within such period as the Commissioner may determine, been registered in terms of section 13(5) of the Non-profit Organisations Act, 1997 (Act No. 71 of 1997), and complied with any other requirements imposed in terms of that Act:
- Provided that notwithstanding subparagraph (iv) of paragraph (b), any business undertaking or trading activity, or asset used in such undertaking or activity, acquired by such organisation before 1 January 2001 by way of donation, bequest or inheritance may be retained or continued, as the case may be, in the form so acquired for a period of five years after that date.
- (4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply—
- (a) in the case of a public benefit organisation established under the terms of a will, or under a constitution or other written instrument which cannot be amended to comply with the said subsection; or
- (b) in any other case, for a period not exceeding five years, if the person responsible in a fiduciary capacity for the funds and assets of such organisation furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.
- (5) Where the Commissioner is—
- (a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or
- (b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis,
- failed to comply with the provisions of this section, or the constitution, will or other written instrument under which it is established to the extent that it

relates to the provisions of this section, he may after due notice withdraw his approval of the organisation with effect from the commencement of that year of assessment.

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

(a) approved in terms of this section; and

(b) not a connected person in relation to such organisation.

(7) Where any such organisation fails so to transfer, or so to take reasonable steps to transfer, its remaining assets, the accumulated net revenue which has not been distributed in terms of this section shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment referred to in subsection (5).

(8) The provisions of this section shall not, if the Commissioner is satisfied that the non-compliance giving rise to the withdrawal contemplated in subsection (5) has been rectified, preclude any such organisation from applying for approval in terms of this section in the year of assessment following the year of assessment during which the approval was so withdrawn by the Commissioner.

(9) Any books of account, records or other documents relating to any approved public benefit organisation shall—

(a) where kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after the date of the last entry in any book; or

(b) where not kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after completion of the transactions, acts or operations to which they relate.

(10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation—

(a) to answer any questions relating to such organisation; or

(b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or

(c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.

(12) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding two years.”.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) The public benefit activities determined by the Minister by notice in the *Gazette* as contemplated in section 30(2) of the Income Tax Act, 1962, shall be incorporated into that Act within a period of 12 months after the date determined by the President in terms of subsection (2).

Amendment of section 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984 and section 32 of Act 53 of 1999

36. (1) Section 38 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (i) of subsection (2) of the following paragraph: 5

“(i) any unit portfolio referred to in paragraph (e)(i) of the definition of ‘company’ in section one.”

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 55 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988 and section 22 of Act 28 of 1997 10

37. Section 55 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (k) of subsection (2) of the following paragraph:

“(k) There shall be no appearance by or on behalf of either party before the Board, whose decision shall be [final and shall be] communicated in duplicate to the Commissioner who shall forward one copy thereof to the donor.” 15

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996 and section 39 of Act 30 of 1998 20

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

(a) by the substitution for paragraph (h) of subsection (1) of the following paragraph: 25

“(h) by or to any person (including any government) referred to in section 10(1)(a), (b), (cA), [(cB), (cC), (cD)](cE), [(cF), (cI), (cJ), (cL)](cN), (d) or (e) [or (fA)];” and

(b) by the deletion of paragraphs (i) and (j) of subsection (1). 30

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*, and shall apply in respect of any donation made on or after that date.

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by 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 and section 35 of Act 53 of 1999 35

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

(a) by the substitution for the words preceding the proviso to subsection (3) of the following words: 40

“The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)(b), (c), (d) and (f) or any foreign dividends as defined in section 9E, but including foreign dividends which are exempt in terms of section 9E(7)(a), (b), (c), (d) or (e)(ii)), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company;” 45

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

“(d) so much of any dividend declared by a unit portfolio referred to in paragraph (e)(i) of the definition of ‘company’ in section 1 as represents a distribution of interest or of dividends referred to in section 11(s) received by or accrued to such unit portfolio;” 50

- (c) by the substitution for paragraph (j) of subsection (5) of the following paragraph:
“(j) any dividend declared by a company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1.”;
- (d) by the substitution for paragraph (a) of subsection (6) of the following paragraph: 5
“(a) If any dividend subject to the payment of secondary tax on companies has been declared by a company which derives profits from sources within and outside the Republic, the secondary tax on companies in respect of that dividend shall be calculated on an amount which bears to the net amount of that dividend the same ratio as the sum of the net annual profits of the company derived from sources within or deemed to be within the Republic in terms of section 9, [or] 9C or 9E bears to the total sum of its net annual profits derived from all sources.”; and 10
- (e) by the substitution for subparagraph (i) of paragraph (b) of subsection (6) of the following subparagraph: 15
“(i) the net annual profits of a company shall be determined by excluding profits derived by way of dividends (other than taxable foreign dividends contemplated in section 9E); and”;
- (2) Subsection (1) shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any foreign dividend— 20
- (i) received by or accrued to any person on or after that date; or
- (ii) which accrued to the person before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any dividend declared by a company before 23 February 2000, where— 25
- (aa) such company is listed on a recognised stock exchange; or
- (bb) in any other case, the chief executive officer and—
- (A) an external auditor of the company; or
- (B) where a company is situated in a country which does not require compulsory appointment of an external auditor, a registered public accountant of the same standing as a qualified chartered accountant, have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000. 30

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by 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 and section 36 of Act 53 of 1999 35

40. (1) Section 64C of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for paragraph (b) of the definition of “recipient” in subsection (1) of the following paragraph: 40
“(b) any [**relative of such**] connected person in relation to a shareholder; or”;
and
- (b) by the deletion of paragraph (c) of the definition of “recipient” in subsection (1). 45
- (2) Subsection (1) shall be deemed to have come into operation on 23 February 2000. 45

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990 and section 26 of Act 21 of 1994 50

41. Section 66 of the Income Tax Act, 1962, is hereby amended by the substitution for item (aa) of subparagraph (ii) of paragraph (b) of subsection (1) of the following item: 55
“(aa) any amount derived by way of interest or taxable dividends [contemplated in section 19(5A)] if the aggregate of such interest and dividends [**exceeded R2 000**]—

- (A) in the case of any person who was or, had he lived would have been, at least 65 years of age on the last day of the year of assessment, exceeded R4 000; or
 (B) in any other case, exceeded R3 000; or”.

Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997 and section 37 of Act 53 of 1999 5

42. Section 70 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Where, during any period of twelve months ending on the last day of February in any year, any cash or any asset the amount or value of which in whole or part constitutes a dividend as defined in section 1, is given to shareholders in any company or a company distributes to shareholders any amount which constitutes a dividend so defined, whether by way of an award of capitalization shares or bonus debentures or securities or otherwise, the company concerned shall, within thirty days after the end of the said period, or within such further period as the Commissioner may allow—
- (a) furnish the Commissioner with a return giving the full name and address of each shareholder and the amount of the dividend accruing to such shareholder; and
 (b) where such dividend represents an amount of any foreign dividend as determined in accordance with the provisions of section 9E and such company is a resident as defined in section 9C, notify each shareholder who is a resident of the amount of such foreign dividend.”.

Amendment of section 74C of Act 58 of 1962, as inserted by section 14 of Act 46 of 1996 and amended by section 28 of Act 28 of 1997 25

43. Section 74C of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (8) of the following paragraph:
 “(b) have the same powers—
- (i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and
 (ii) relating to contempt committed during the proceedings, as are vested in a President of the Special Court contemplated in section 83, and for those purposes sections 84 and 85 shall apply *mutatis mutandis*; and”.
- (b) by the substitution for subsections (11), (12) and (13) of the following subsections:
- “(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present **[throughout]** at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.
- (12) Any person contemplated in subsection (9) has the right to **[a representative of his choice]** have a legal representative present during the time that he appears before the presiding officer.
- (13) An inquiry contemplated in this section shall **[not be public]** be private and confidential and the presiding officer shall at any time on application **[of]** by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.”;
- (c) by the substitution for subsection(15) of the following subsection:
 “(15) The provisions with regard to the preservation of secrecy contained in section 4 shall *mutatis mutandis* apply to any person present

at the questioning of any person contemplated in subsection (9), including the person being questioned.”;

(d) by the addition of the following subsections:

“(16) Subject to subsection (17), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party. 5

(17) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him. 10

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers, or a failure to answer questions lawfully put to him, fully and satisfactorily. 15

(18) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person contemplated in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of such inquiry.”. 20

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996 and section 39 of Act 53 of 1999 25

44. Section 75 of the Income Tax Act, 1962, is hereby amended by the substitution for the words following on paragraph (g) of subsection (1) of the following words:

“shall be guilty of an offence and liable on conviction to a fine [not exceeding R2 000] or to imprisonment for a period not exceeding 12 months [or to both such fine and such imprisonment].” 30

Amendment of section 83 of Act 58 of 1962, as amended by section 21 of Act 90 of 1964, section 22 of Act 103 of 1976, section 15 of Act 104 of 1979, section 19 of Act 96 of 1985, section 16 of Act 70 of 1989, section 36 of Act 129 of 1991, section 36 of Act 113 of 1993 and section 30 of Act 28 of 1997 35

45. Section 83 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (a) of subsection (19) of the following:

“[(a)] The President of the court may indicate which judgments or decisions of the court he considers ought to be published for general information, in such form as does not reveal the identity of the appellant.”; and 40

(b) by the deletion of paragraphs (b) and (c) of subsection (19).

Amendment of section 84 of Act 58 of 1962

46. Section 84 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If any person who has been duly subpoenaed to give evidence at the hearing of an appeal or to produce any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the President of the court, to remain in attendance throughout the proceedings, the President of the court may, upon being satisfied upon oath or by the return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered 45 50

to him, impose upon the said person a fine **[not exceeding fifty rand]** or in default of payment imprisonment for a period not exceeding three months.”.

Amendment of section 85 of Act 58 of 1962

47. Section 85 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) If during the sitting of a special court, any person wilfully insults a member of the court or any officer of the court attending at the sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held, the President of the court may make an order committing that person to imprisonment for any period not exceeding three months or order that person to pay a fine **[not exceeding one hundred rand]** or in default of payment thereof to be imprisoned for such a period.”. 10

Substitution of section 99 of Act 58 of 1962

48. The following section is hereby substituted for section 99 of the Income Tax Act, 1962: 15

“Power to appoint agent

99. The Commissioner may, if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Act and may be required to make payment of any tax, interest or penalty due from any moneys, including pensions, salary, wages or any other remuneration, which may be held by him or due by him to the person whose agent he has been declared to be.”. 20

Amendment of section 101 of Act 58 of 1962, as amended by section 29 of Act 90 of 1962, section 22 of Act 52 of 1970, section 39 of Act 94 of 1983, section 40 of Act 129 of 1991 and section 27 of Act 36 of 1996 25

49. (1) Section 101 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every company carrying on business or having an office in the Republic and every unit portfolio constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section one, shall at all times be represented by an individual residing therein.”. 30

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 104 of Act 58 of 1962

50. Section 104 of the Income Tax Act, 1962, is hereby amended by the substitution for the words following on paragraph (d) of subsection (1) of the following words: 35

“shall be guilty of an offence and liable on conviction to a fine **[not exceeding one thousand rand]** or to imprisonment for a period not exceeding two years **[or to both such fine and such imprisonment]**.”.

Amendment of section 106 of Act 58 of 1962, as substituted by section 29 of Act 69 of 1975 and amended by section 26 of Act 103 of 1976 40

51. (1) Section 106 of the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (ii) of paragraph (d) of subsection (2) of the following subparagraph:

“(ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under subsection (5) of section 101 or, in the case of any unit portfolio referred to in paragraph (e)(i) of the definition of ‘company’ in section 1, the public officer of which is the trustee referred to in the said subsection (5), by such trustee, or where no such place has been 45

appointed by the company or trustee, as the case may be, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company or trustee, as the case may be, in the Republic; or”.

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000. 5

Amendment to 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 and section 52 of Act 30 of 1998 10

52. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 15

(a) by the addition to the definition of “employee” of the following paragraphs: 15

“(e) any personal service company; and

(f) any personal service trust.”;

(b) by the substitution for the definition of “labour broker” of the following definition: 20

“ ‘labour broker’ means any person who conducts or carries on any business whereby such person for reward provides a client of such business with other persons [**(other than any person who qualifies as a labour broker under this definition)**] to render a service or perform work for such client, or procures such other persons for the client, for which services or work such other persons are remunerated by such person.”; and 25

(c) by the insertion after the definition of “labour broker” of the following definitions: 30

“ ‘personal service company’ means any company (other than a company which is a labour broker), where any service rendered on behalf of such company to a client of such company is rendered personally by any person who is a connected person in relation to such company, and— 30

(a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company; or 35

(b) such person or such company is subject to the control or supervision of such client as to the manner in which, or hours during which, the duties are performed or are to be performed in rendering such service; or 40

(c) the amounts paid or payable in respect of such service consist of, or include, earnings of any description which are payable at regular daily, weekly, monthly or other intervals; or

(d) where more than 80 per cent of the income of such company during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company, or any associated institution as defined in the Seventh Schedule to this Act, in relation to such client, 45

except where such company throughout the year of assessment, employs more than three full-time employees who are on a full-time basis engaged in the business of such company of rendering any such service, other than any employee who is a shareholder or member of the company or is a connected person in relation to such person; 50

‘personal service trust’ means any trust (other than a trust which is a labour broker), where any service rendered on behalf of such trust to a client of such trust is rendered personally by any person who is a connected person in relation to such trust, and— 55

- (a) such person would be regarded as an employee of such client if such service was rendered by such person directly to such client other than on behalf of such trust; or
- (b) such person or such trust is subject to the control or supervision of such client as to the manner in which, or hours during which, the duties are performed or are to be performed in rendering such service; or
- (c) the amounts paid or payable in respect of such service consist of, or include, earnings of any description which are payable at regular daily, weekly, monthly or other intervals; or
- (d) where more than 80 per cent of the income of such trust during the year of assessment, from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such trust, or associated institution as defined in the Seventh Schedule to this Act, in relation to such client, except where such trust throughout the year of assessment, employs more than three full-time employees who are on a full-time basis engaged in the business of such trust of rendering any such service, other than any employee who is a connected person relation to such person or such trust;”.
- (2) (a) Subsection (1)(a) shall come into operation on 1 August 2000.
 (b) Subsection (1)(b) shall be deemed to have come into operation on 1 July 2000.
 (c) Subsection (1)(c) shall be deemed to have come into operation on 1 April 2000, and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995 and section 45 of Act 28 of 1997

- 53.** (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to item (a) of subparagraph (5) of the following proviso:
 “Provided that the Commissioner shall not issue a certificate of exemption if—
- (aa) more than 80 per cent of the gross income of such person during the year of assessment consists of, or is likely to consist of, an amount or amounts received from any one client of such person, or any associated institution as defined in the Seventh Schedule to this Act in relation to such client;
- (bb) such labour broker provides to any of its clients the services of any other labour broker; or
- (cc) such labour broker is contractually obliged to provide a specified employee of such labour broker to render any service to such client.”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 July 2000, and shall apply in respect of any application for a certificate of exemption received on or after that date.

Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 26 of Act 96 of 1985, Government Notice No. R.2706 of 29 November 1985, section 33 of Act 65 of 1986, Government Notice No. R.2683 of 19 December 1986, section 28 of Act 85 of 1987, Government Notice No. R.714 of 14 April 1989, section 24 of Act 70 of 1989, Government Notice No. R.763 of 29 March 1990, section 55 of Act 101 of 1990, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994 and section 40 of Act 36 of 1996 5

54. Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “official rate of interest” of the following definition: 10

“ ‘official rate of interest’ means [a] the rate of interest [of 14,5 per cent per annum] fixed by the Minister from time to time by notice in the *Gazette*;”.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 van 1984 and 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 49 of Act 28 of 1997 and section 55 of Act 30 of 1998 15

55. Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of subparagraph (4) of the following item: 20

“(b) in any other case, an amount calculated [at the rate of R100 per person per day for each day during which the accommodation was so occupied or] at the prevailing rate per day at which such accommodation [would] could normally be let to any person who is not an employee of the employer or of any associated institution in relation to the employer [whichever rate is lower].” 25

Substitution of paragraph 19 of Seventh Schedule to Act 58 of 1962, as substituted by section 27 of Act 70 of 1989

56. The following paragraph is hereby substituted for paragraph 19 of the Seventh Schedule to the Income Tax Act, 1962: 30

“19. Any person who makes or issues or causes to be made or issued or knowingly possesses or uses or causes to be used any certificate referred to in paragraph 17(1) which is false, shall be guilty of an offence and liable on conviction to a fine [not exceeding R400] or to imprisonment for a period not exceeding [six] twelve months [or to both such fine and such imprisonment].” 35

Amendment of paragraph 20 of Seventh Schedule to Act 58 of 1962, as amended by section 39 of Act 96 of 1985 and section 34 of Act 21 of 1994

57. Paragraph 20 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion of item (a) of subparagraph (1); 40

(b) by the substitution for item (e) of subparagraph (1) of the following item:
“(e) the provisions of paragraph [9(3)(b)] 9(3)(a) so as to vary the amount and quantities specified therein;”;

(c) by the deletion of items (f) and (g) of subparagraph (1); and

(d) by the substitution for item (i) of subparagraph (1) of the following item: 45
“(i) the provisions of paragraph 10(2)[(d)] so as to vary the amount specified therein; and”.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998 and section 46 of Act 53 of 1999 5

58. Section 1 of the Customs and Excise Act, 1964, is hereby amended—

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

“In this Act, unless the context otherwise indicates, any reference to customs and excise or matters relating thereto, shall be deemed to include a reference to— 10

(a) surcharge and fuel levy or matters relating thereto;

(b) air passenger tax or matters relating thereto in so far as those provisions can be applied and subject to the provisions of section 47B, and—; and 15

(c) by the substitution for the definition of “duty” of the following definition:

“‘duty’ means any duty leviable under this Act and, subject to the provisions of section 47B, any passenger tax leviable under that section;” 20

Insertion of section 47B in Act 91 of 1964

59. (1) The following section is hereby inserted after section 47A of the Customs and Excise Act, 1964:

“Air passenger tax

47B. (1) For the purposes of this section, unless the context otherwise indicates— 25

‘agent’ means an agent contemplated in subsection (5)(c);

‘airline’ means any air transport enterprise offering or operating an international air service;

‘airport’ means a customs and excise airport specified in item 200.04 of the Schedule to the rules; 30

‘carriage’ means carriage by air;

‘chargeable aircraft’ means an aircraft designed or adapted to carry any person in addition to the flight crew;

‘chargeable passenger’, subject to the provisions of subsection (3), means every passenger on a chargeable aircraft departing from an airport in the Republic to a destination in a territory outside the Republic; 35

‘flight’, in relation to any chargeable passenger, means the carriage of such passenger from an airport in the Republic on a chargeable aircraft to any destination in a territory outside the Republic; 40

‘operator’, in relation to a chargeable aircraft, means the person having the management of the aircraft for the time being, and includes any airline or any person who owns or hires such aircraft or in whose name the aircraft is registered in terms of the regulations made under the Aviation Act, 1962 (Act No. 74 of 1962); 45

‘passenger’, in relation to any chargeable aircraft, means—

(a) where the operator is an air transport undertaking, any person carried on the aircraft other than—

(i) a member of the flight crew;

(ii) a cabin attendant; or 50

(iii) a person not carried for reward who is an employee of the operator and who satisfies such other requirements as may be prescribed by rule; and

(b) in any other case, any person carried for reward;

‘reward’, in relation to the carriage of any person, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been given or is to be given; 55

'tax' means air passenger tax.

(2) (a) A tax known as air passenger tax shall be charged in accordance with this section on the carriage on a chargeable aircraft of any chargeable passenger.

(b) (i) The tax shall be charged at the rate of R100 on the carriage of each chargeable passenger departing on a flight: Provided that the Minister may by notice in the *Gazette* lower the rate, and by like notice amend any rate so lowered, in respect of any flight of which the final destination is any country in Africa.

(ii) In considering the lowering or amendment of the rate, the Minister shall take into account—

(aa) the distance between an airport in a country concerned and an airport in the Republic;

(bb) any agreement existing between the Republic and any of the countries concerned;

(cc) the price of the flight ticket; and

(dd) any other ground which may be regarded as reasonable in the circumstances.

(iii) The provisions of section 48(6) shall apply *mutatis mutandis* to any notice referred to in the proviso to subparagraph (i).

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

(d) Subject to the provisions of this section and the rules, the tax—

(i) becomes due when the aircraft first takes off on the passenger's flight;

(ii) shall be paid—

(aa) for the benefit of the National Revenue Fund;

(bb) in respect of each chargeable passenger, by the operator or the agent;

(cc) in accordance with the rules as contemplated in subsection (7)(b)(i).

(e) Subject to the provisions of this section and except for the purposes of any customs union agreement concluded under section 51, the tax shall be deemed to be a duty leviable under this Act.

(3) (a) A child who—

(i) has not attained the age of two years; and

(ii) is not allocated a separate seat before boarding the aircraft, is not a chargeable passenger.

(b) A passenger is not a chargeable passenger if—

(i) not carried for reward—

(aa) in pursuance of any requirement imposed under any law; or

(bb) for the purposes only of inspecting matters relating to the aircraft or the flight crew;

(ii) whether or not carried for reward, in pursuance of any international agreement, convention or obligation, subject to the approval of the Commissioner and such conditions as he may impose in each case;

(c) Any passenger, who is in transit through the Republic and departs from the transit area of the airport on a flight without entering the Republic by passing through immigration, is not a chargeable passenger.

(4) (a) The Commissioner shall keep a register of operators.

(b) (i) The operator of a chargeable aircraft used for the carriage of

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any chargeable passenger shall be liable to be registered under this section.

(ii) Application for registration shall be in such form and manner and contain such information as may be prescribed by rule.

(c) Any person liable to be registered under this section ceases to be so liable if the Commissioner is, on good cause shown, satisfied that—

- (i) such person no longer operates any chargeable aircraft; or
- (ii) no chargeable aircraft operated by such person will be used for the carriage of chargeable passengers.

(d) Any person who is not registered and who has not applied for registration shall, if he becomes liable to be registered at any time, give notice of that fact to the Commissioner and apply for registration in writing within seven days of the time of becoming so liable.

(e) Every pilot of a chargeable aircraft shall, for the purposes of section 7(3), produce together with the report outwards—

- (i) proof of registration of the operator; or
- (ii) a certificate from the Commissioner that the operator is not liable to be registered; and
- (iii) a passenger manifest in such form and containing such particulars as may be prescribed by rule.

(5) (a) An operator who—

- (i) is, or is liable to be, registered; and
- (ii) does not meet the requirements contemplated in paragraph (b),

shall appoint an agent whose place of business is in the Republic as the South African representative of the operator.

(b) A person meets the requirements of this subsection if such person—

- (i) has any business establishment or other fixed establishment in the Republic; or
- (ii) is an individual and is usually resident in the Republic.

(c) The Commissioner may register any duly appointed agent of an operator, and if so registered, the agent may act on behalf of the operator for the purposes of this Act.

(d) The Commissioner may by rule prescribe the following:

- (i) The persons who may be appointed as agent;
- (ii) the manner and conditions in or on which a person is to be appointed as agent for an operator;
- (iii) the conditions on which agents are registered by the Commissioner; and
- (iv) any other matter which is required or permitted in terms of this section to be prescribed by rule.

(e) (i) The Commissioner may refuse to register an agent appointed by an operator or cancel or suspend the registration of any agent.

(ii) For the purposes of subparagraph (i), the provisions of section 60(2) shall apply *mutatis mutandis*.

(f) The provisions of sections 44A, 98 and 99(1) shall apply *mutatis mutandis* to an operator and his agent.

(6) (a) No—

- (i) operator who is liable to be registered; or
- (ii) agent appointed by an operator,

may conduct any business contemplated in this section unless such operator or agent has furnished such security as the Commissioner may require.

(b) The Commissioner may at any time require that the form, nature or amount of such security be altered in such a manner as he may determine.

(7) (a) Any operator who is registered or liable to be registered and any agent of such operator shall—

- (i) keep accounts in such form and such manner; and

- (ii) render tax accounts at such time, in such manner and for such periods,
as may be prescribed by rule.
- (b) (i) Any operator or agent of such operator shall pay any tax due at such time, in such manner and at such place as may be prescribed by rule.
- (ii)(aa) Any tax due and not accounted for and not paid in accordance with the provisions of this subsection, shall be paid upon demand by the Commissioner.
- (bb) If such tax is not paid within 14 days after demand for payment was made, it shall be recoverable in terms of the provisions of this Act as if it were a duty payable under this Act.
- (iii) Interest on any outstanding tax shall be payable as provided in section 105.
- (iv) Any amounts of tax overpaid shall be refundable in the circumstances and on compliance with such conditions as may be prescribed by rule.
- (8) (a) Any person who—
- (i) is knowingly a party to the fraudulent evasion of tax or attempts to commit such evasion or assists any other person in taking steps with a view to such fraudulent evasion; or
- (ii) in connection with tax makes a statement he knows to be false or recklessly makes a statement that is false, or, with intent to deceive produces or makes use of a book, account, return or other document that is false,
- shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or three times the value of the tax to which the offence relates, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment, and the aircraft in respect of which the fraudulent act took place or false statements were made shall be liable to forfeiture in accordance with this Act.”.
- (2) Subsection (1) shall come into operation on 1 November 2000, and shall apply to any carriage of a chargeable passenger on any flight which commences on or after that date.

Amendment of section 49 of Act 91 of 1964, as substituted by section 55 of Act 53 of 1999

60. (1) Section 49 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution for the words following on subparagraph (iv) of paragraph (a) of subsection (1) of the following words:
- “such agreement or any protocol or other part or provision thereof is enacted into law as part of this Act when published by notice in the *Gazette* in accordance with the provisions of subsections (1) and (1A) of section 48 or subsection (5) or (5B) of this section.”;
- (b) by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:
- “(i) Any amendment of such agreement or any protocol or other part or provision thereof, any regulations for facilitating implementation, any agreed list of processing relating to originating status of goods, any other matter agreed upon between governments or by any committee of, or a body established by, the parties to such agreement or any decision or condition imposed by such committee or body, is likewise enacted into law as part of this Act when published in accordance with the provisions of subsections (1) and (1A) of section 48 or subsection (5) or (5B) of this section by notice in the *Gazette* as an amendment of such agreement or protocol or part or provision, as the case may be, with effect from any date that may be specified in such notice.”; and
- (c) by the insertion after subsection (5A) of the following subsection:

“(5B) Notwithstanding the provisions of subsection (5), the Minister may include in any notice published under that subsection, the full text of any such agreement or protocol except any protocol or other part thereof, as the case may be, published under subsection 48(1A), and if so included, the whole agreement or protocol, as the case may be, shall be enacted into law as part of this Act as contemplated in subsection (1)(a).” 5

(2) Subsection (1) shall be deemed to have come into operation on 24 November 1999.

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973 section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994 and section 53 of Act 45 of 1995 10 15

61. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: 20

“(b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any customs duties or fuel levy applicable in respect of such goods at the time of entry for home consumption thereof, to the extent stated in, and subject to compliance with the provisions of, the item of Schedule No. 4 in which such goods are specified;” 25

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1987.

Amendment of section 76 of Act 91 of 1964, as substituted by section 30 of Act 59 of 1990 and amended by section 5 of Act 105 of 1992 and section 54 of Act 45 of 1995

62. Section 76 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the deletion of the word “or” at the end of paragraph (f) of subsection (2); 30

(b) by the addition of the word “or” at the end of paragraph (g) of subsection (2); and

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

“(h) duty having been paid, notwithstanding the provisions of section 49(9), on any goods at the general rate of duty specified in respect thereof in any heading or subheading in Part 1 of Schedule No. 1 and proof is produced that the goods concerned qualify for a preferential rate of duty specified for such heading or subheading in the said Part 1 of the said Schedule No. 1.” 35

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2000. 40

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998 and section 6 of Act 32 of 1999

63. Section 105 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of the following paragraph: 45

“(b) the interest so payable shall be paid at [the rate of 14,5 per cent per annum, or such other] a rate which the Minister of Finance may from time to time fix by notice in the *Gazette*;”.

Amendment of Schedule No. 1 to Act 91 of 1964

64. (1) Schedule No. 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Schedule 2 to this Act. 50

(2) Subject to the provisions of section 58(1) of the Customs and Excise Act, 1964, subsection (1) shall be deemed to have come into operation on 23 February 2000.

Continuation of certain amendments of Schedules Nos. 1 to 6 to Act 91 of 1964

65. (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, to the Customs and Excise Act, 1964, made under section 48, 56 or 75(15) of that Act during the calendar year ending on 31 December 1999 shall not lapse by virtue of the provisions of section 48(6), 56(3) or 75(16) of that Act. 5

(2) The amendments of Part 5 of Schedule No. 1 to the Customs and Excise Act, 1964, made under section 48 of that Act by Government Notice No. R.321 of 3 April 2000, shall not lapse by virtue of the provisions of section 48(6) of that Act.

Substitution of long title of Act 91 of 1964, as substituted by section 42 of Act 59 of 1990 10

66. The long title of the Customs and Excise Act, 1964, is hereby substituted by the following long title:

“ACT

To provide for the levying of customs and excise duties and a surcharge; for a fuel levy and for an air passenger tax; the prohibition and control of the importation, export, [or] manufacture or use of certain goods; and for matters incidental thereto.”. 15

Amendment of section 4 of Act 77 of 1968, as amended by section 17 of Act 103 of 1969, section 5 of Act 72 of 1970, section 6 of Act 66 of 1973, section 8 of Act 88 of 1974, section 4 of Act 95 of 1978, section 7 of Act 99 of 1981, section 4 of Act 87 of 1982, section 4 of Act 118 of 1984, section 10 of Act 81 of 1985, section 18 of Act 87 of 1988, section 4 of Act 69 of 1989, section 5 of Act 136 of 1992, section 13 of Act 97 of 1993 and section 78 of Act 30 of 1998 20

67. (1) Section 4 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of subparagraph (iv) of paragraph (b) of subsection (1); 25

(b) by the substitution for subparagraph (i) of paragraph (f) of subsection (1) of the following subparagraph:

“(i) a [religious, charitable or educational institution of a public character] public benefit organisation which is exempt from tax in terms of section [10(1)(f)] 10(1)(cN) of the Income Tax Act, 1962 (Act 58 of 1962) [and any fund which is exempt from tax in terms of section 10(1)(fA) of the said Act]; or”; 30

(c) by the deletion of subparagraphs (ii) and (iii) of paragraph (f) of subsection (1); and

(d) by the substitution for the words following on subparagraph (iii) of paragraph (f) of subsection (1) of the following words: 35

“if the duty thereon would be legally payable and borne by such [institution, fund, company, society, trust or other association, as the case may be] public benefit organisation;”;

(e) by the addition to subsection (1) of the following paragraph: 40

“(h) any instrument transferred by any public benefit organisation, which is exempt from tax in terms of section 10(1)(cN) of the Income Tax Act, 1962, to any other entity which is controlled by such public benefit organisation in order to comply with the provisions of the proviso to section 30(3) of that Act.”. 45

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 January 2000.

(b) Subsection (1)(b), (c), (d) and (e) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 5 of Act 77 of 1968, as amended by section 9 of Act 89 of 1972, section 7 of Act 66 of 1973, section 9 of Act 114 of 1977, section 5 of Act 118 of 1984, section 10 of Act 86 of 1987, section 19 of Act 87 of 1988, section 6 of Act 136 of 1991, section 6 of Act 136 of 1992 and section 79 of Act 30 of 1998

68. Section 5 of the Stamp Duties Act, 1968, is hereby amended— 5
- (a) by the substitution for the words preceding the proviso to subsection (1) of the following words: 5
- “The payment of any duty or of any penalty incurred under section 9 shall, save as is otherwise specially provided in this Act, be denoted by means of adhesive revenue stamps for the amount of such duty or adhesive penalty stamps for the amount of such penalty [**where the amount of such duty or penalty does not exceed an amount of R400**], and such stamps shall be affixed to the instrument chargeable with the duty or penalty and be defaced as prescribed by this Act.”; and 10
- (b) by the deletion of subsection (1A). 15

Amendment of section 27 of Act 77 of 1968, as amended by section 28 of Act 87 of 1988

69. Section 27 of the Stamp Duties Act, 1968, is hereby amended—
- (a) by the substitution for the words following on paragraph (k) of subsection (1) of the following words: 20
- “or who causes or procures any of the acts mentioned in any of paragraphs (a) to (k), inclusive, to be done or knowingly aids, abets or assists any person in doing any such act, shall be guilty of an offence and liable on conviction to a fine [**not exceeding R10 000**] or to imprisonment for a period not exceeding two years [**or to both such fine and such imprisonment**].”; and 25
- (b) by the substitution for the words following on paragraph (b) of subsection (2) of the following words: 30
- “shall be guilty of an offence and liable on conviction to a fine [**not exceeding R4 000**] or to imprisonment for a period not exceeding six months [**or to both such fine and such imprisonment**].”.

Amendment of section 28A of Act 77 of 1968, as inserted by section 12 of Act 88 of 1974 and amended by section 29 of Act 87 of 1988

70. Section 28A of the Stamp Duties Act, 1968, is hereby amended by the substitution for the words following on paragraph (c) of subsection (1) of the following words: 35
- “shall be guilty of an offence and on conviction liable to a fine [**not exceeding R4 000**] or to imprisonment for a period not exceeding six months [**or to both such fine and such imprisonment**].”.

Amendment of section 31C of Act 77 of 1968, as inserted by section 18 of Act 46 of 1996 40

71. Section 31C of the Stamp Duties Act, 1968, is hereby amended—
- (a) by the substitution for paragraph (b) of subsection (8) of the following paragraph: 45
- “(b) have the same powers—
- (i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and 45
- (ii) relating to contempt committed during the proceedings, as are vested in a President of the Special Court contemplated in section

83 of the Income Tax Act, 1962, and for those purposes sections 84 and 85 of that Act shall apply *mutatis mutandis*; and”;

- (b) by the substitution for subsections (11), (12) and (13) of the following subsections:

“(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present **[throughout]** at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to **[a representative of his choice]** have a legal representative present during the time that he appears before the presiding officer.

(13) An inquiry contemplated in this section shall **[not be public]** be private and confidential and the presiding officer shall at any time on application **[of]** by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.”;

- (c) by the addition of the following subsections:

“(15) Subject to subsection (16), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party.

(16) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him.

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers or a failure to answer questions lawfully put to him, fully and satisfactorily.

(17) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person contemplated in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of that inquiry.”.

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998 and section 79 of Act 53 of 1999

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

- (a) by the deletion of paragraph (d) under the heading “*Exemptions from the duty under paragraph (1) or (2)*”; and
 (b) by the deletion of paragraph (u) under the heading “*Exemptions from the duty under paragraph (3)*”.

Amendment of Item 18 of Schedule 1 to Act 77 of 1968, as amended by section 26 of Act 103 of 1969, section 18 of Act 66 of 1973, section 34 of Act 87 of 1988, section 84 of Act 89 of 1991 and section 18 of Act 97 of 1993

73. Item 18 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—
- (a) by the substitution for the words preceding subitem (1) of the following words: 5
 - “*Policy of insurance*, including any other instrument which constitutes a long-term policy [of insurance] under the Long-term Insurance Act, [1943 (Act No. 27 of 1943)] 1998 (Act No. 52 of 1998).”;
 - (b) by the substitution for paragraph (2A) of the following paragraph: 10
 - “(2A) Policy of insurance against accident to a person or in respect of any bodily injury to or any incapacity or sickness of any person or the like, if such insurance is provided for in a policy which is mainly a policy of life insurance subject to duty under paragraph (1) or (2) 0 50
 - [(a) where such policy of life insurance is a home service 15
 - policy or industrial policy as contemplated in the Insurance Act, 1943 (Act No. 27 of 1943) 0 20
 - (b) in any other case 0 50]”; and
 - (c) by the deletion of paragraph (6)(a).

Amendment of Item 20 of Schedule 1 to Act 77 of 1968, as amended by section 27 of Act 103 of 1969, section 19 of Act 66 of 1973, section 24 of Act 88 of 1974, section 17 of Act 92 of 1983, section 35 of Act 87 of 1988 and section 36 of Act 9 of 1989 20

74. Item 20 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (b) under the heading “*Exemptions*” of the following paragraph: 25
- “(b) Where such document of security or pledge or such act of suretyship, indemnity or guarantee constitutes a long-term policy [of insurance] under the Long-term Insurance Act, [1943 (Act 27 of 1943)] 1998 (Act No. 52 of 1998).”.

Insertion of section 24 in Act 40 of 1987 30

75. (1) The following section is hereby inserted after section 23 of the Eskom Act, 1987:

“Taxation of receipts and accruals of Eskom and subsidiaries

24. (1) The provisions of section 10(1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962), shall not apply in respect of the receipts and accruals of— 35
- (a) Eskom; and
 - (b) any South African company of which all the shares are held by Eskom, if the operations of such company are ancillary or complementary to the objects of Eskom referred to in section 3. 40
- (2) The Minister of Finance shall, after consultation with the Minister and the Minister of Minerals and Energy, determine the tax values of the capital assets owned on 1 January 2000 by Eskom and any company contemplated in subsection (1)(b) for the purpose of calculating any wear and tear or depreciation allowances contemplated in the Income Tax Act, 1962. 45
- (3) When—
- (a) Eskom is incorporated as a company as contemplated in section 2A (hereinafter referred to as the converted company); or
 - (b) any asset, liability, right, obligation or any business of Eskom has been transferred to any company (hereinafter referred to as the transferee company), 50

Eskom and the converted company or the transferee company, as the case may be, shall, subject to such adjustments as may be necessary, for the purposes of the provisions of the Income Tax Act, 1962, be deemed to be one and the same entity.

(4) No tax, duty or levy shall be payable in respect of the transfer of any asset from Eskom to any company contemplated in subsection (3).” 5

(2) Subsection shall be deemed to have come into operation on 1 January 2000.

Amendment of section 1 of the 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 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 and section 81 of Act 53 of 1999 10

76. Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in the definition of “motor car” for the words preceding paragraph (a) of the following words:

“ ‘motor car’ includes a motor car, station wagon, minibus, double cab light delivery vehicle and any other motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or adapted wholly or mainly for the carriage of passengers, but does not include—” 15

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998 and section 85 of Act 53 of 1999 20

77. Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition in subsection (2) of the word “or” at the end of paragraph (q); and 25

(b) by the addition to subsection (2) of the following paragraph:

“(r) the services comprise of the vocational training of employees (other than educational services contemplated in section 12(h)) for an employer who is not a resident of the Republic and who is not a vendor.”

Amendment of section 27 of Act 89 of 1991, as amended by section 34 of Act 136 of 1991, Government Notice 2695 of 8 November 1991 and section 28 of Act 136 of 1992 30

78. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended—

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

“ ‘Category E’ means the category of vendors whose tax periods are periods of twelve months ending on the last day of their ‘year of assessment’ as defined in section 1 of the Income Tax Act or where any vendor falling within this category makes written application therefor, on the last day of such other month as the Commissioner may approve.”; 35

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph: 40

“(a) Every vendor, not being a vendor who falls within Category C, [or] D or E as contemplated in subsection (3), [or] (4) or (4A), shall fall within Category A or Category B.”;

(c) by the substitution for the proviso to subsection (3) of the following proviso: 45

“Provided that a vendor falling within Category C shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if the vendor has applied in writing to be placed within Category A, B, [or] D or E and the Commissioner is

satisfied that by reason of a change in the vendor’s circumstances he satisfies the requirements of this section for placing within Category A, B, **[or]** D or E.”;

- (d) by the substitution for the proviso to subsection (4) of the following proviso: 5
 “Provided that a vendor falling within Category D shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in paragraph (e) for the vendor to be placed within Category A, B, **[or]** C or E or the Commissioner is satisfied that by reason of a change in circumstances 10
 that vendor should be placed within Category A, B, **[or]** C or E.”;

- (e) by the insertion after subsection (4) of the following subsection:

“(4A) A vendor shall fall within Category E if—

- (a) the vendor is a company or a trust fund; 15
- (b) the vendor’s enterprise consists solely of one or more of the activities of— 15
 - (i) letting of fixed property or the renting of movable goods to; or
 - (ii) the administration or management of,
 companies which are connected persons in relation to the vendor;
- (c) the recipients of those supplies are all registered vendors and are entitled to deductions of the full amount of tax in respect of those supplies; 20
- (d) tax invoices are issued once a year and payments of consideration for these supplies, by agreement between the parties, only become due once a year at the end of the ‘year of assessment’ as defined in section 1 of the Income Tax Act of the vendor making the supplies; 25
 and
- (e) the vendor has made written application to the Commissioner in such form as the Commissioner may prescribe, to be placed in Category E, 30
 and the Commissioner has directed that, with effect from a date which he considers appropriate, the vendor shall fall within Category E: Provided that a vendor falling within Category E shall cease to fall within that Category with effect from a date notified by the Commissioner if— 35
 - (i) written application is made by the person who made the application referred to in paragraph (e) for the vendor to be placed in a different Category; or 35
 - (ii) the Commissioner is satisfied that by reason of a change in circumstances, that vendor should be placed in Category A, B, C or D; or 40
 - (iii) the vendor’s placing in Category E results in any financial loss (including any loss of interest) to the State.”; and 40

- (f) by the substitution for paragraph (ii) of the proviso to subsection (6) of the following paragraph:

“(ii) any tax period ending on the last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last day, end on a fixed day approved by the Commissioner, which day shall fall within 10 days before or after such last day;” 45

(2) Subsection (1)(f) shall come into operation on 1 November 2000, and shall apply in respect of any tax period commencing on or after that date. 50

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992

79. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that—

- (i) where the last day of any period within which a return shall be furnished and payment shall be made falls on a Saturday, Sunday or a public holiday, such return shall be furnished and such payment shall be made not later than the last business day falling prior to such Saturday, Sunday or public holiday;
- (ii) where payment of the full amount of the tax is effected by means of an electronic transfer and the requirements for the transfer of the tax have been met by the vendor, such electronic transfer shall not be effected prior to the last business day of the month during which the said twenty-fifth day falls and the period within which the tax is required to be paid shall be deemed to end on the last business day of such month.”.

Amendment of section 31 of Act 89 of 1991

80. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (5) of the following subsection:

“(5A) If it appears to the Commissioner that any person is for any reason unable to furnish an accurate return as contemplated in section 28, 29 or 30, the Commissioner may agree in writing with such person as to the amount upon which tax shall be payable, and to the extent that an assessment is issued upon an amount so agreed to, such assessment shall not be subject to objection.”.

Amendment of section 43 of Act 89 of 1991, as amended by section 99 of Act 30 of 1998 and section 97 of Act 53 of 1999

81. Section 43 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of subsection 1 of the following paragraph:

“(a) who has been convicted of any offence under this Act, or any other Act administered by the Commissioner, or who has repeatedly failed to pay amounts of tax due by him or to carry out other obligations imposed upon him by this Act, or any other Act administered by the Commissioner; or”.

Amendment of section 57C of Act 89 of 1991, as inserted by section 24 of Act 46 of 1996 and amended by section 48 of Act 27 of 1997

82. Section 57C of the Value-Added Tax Act, 1991, is hereby amended—

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

“(b) have the same powers—

- (i) to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material; and
 - (ii) relating to contempt committed during the proceedings, as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, and for those purposes section 84 and 85 of that Act shall apply *mutatis mutandis*; and”.
- (b) by the substitution for subsections (11), (12) and (13) of the following subsections:

“(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present [throughout] at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in

subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to **[a representative of his choice]** have a legal representative present during the time that he appears before the presiding officer. 5

(13) An inquiry contemplated in this section shall **[not be public]** be private and confidential and the presiding officer shall at any time on application **[of]** by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), 10 exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.”;

(c) by the substitution for subsection(15) of the following subsection:

“(15) The provisions with regard to the preservation of secrecy contained in section 6 shall *mutatis mutandis* apply to any person present at the questioning of any person contemplated in subsection (9), 15 including the person being questioned.”;

(d) by the addition of the following subsections:

“(16) Subject to subsection (17), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party. 20

(17) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him. 25

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers or a failure to answer questions lawfully put to him, fully and satisfactorily. 30

(18) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person identified in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of that inquiry.”. 35

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

83. The supply of any goods or services by the International Telecommunication Union in connection with “Africa Telecom 2001” shall be exempt from value-added tax imposed in terms of section 7(1)(a) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991). 40

Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993, section 4 of Act 168 of 1993, section 34 of Act 20 of 1994, section 6 of Act 37 of 1995, section 34 of Act 37 of 1995, section 55 of Act 27 of 1997, section 105 of Act 30 of 1998 and section 107 of Act 53 of 1999

 45

84. Section 60 of the Income Tax Act, 1993, is hereby amended by the substitution for subparagraph (i) of paragraph (a) of subsection (5) of the following subparagraph:

“(i) not to be a dividend for the purposes of **[Parts III and] Part VII** of Chapter II of that Act; and”. 50

Amendment of section 1 of Act 38 of 1996

- 85.** (1) Section 1 of the Tax on Retirement Funds Act, 1996, is hereby amended—
- (a) by the substitution for paragraph (b) of the definition of “actuarial value” of the following paragraph:
- “(b) in the case of an untaxed policyholder fund, by the insurer’s **[valuator]** 5
actuary appointed in terms of section 20 of the Long-term Insurance Act,
[1943 (Act 27 of 1943)] 1998 (Act No. 52 of 1998), in terms of the latest
valuation on the basis as required [in terms of the last-mentioned Act]
for the purpose of the definition of ‘value of liabilities’ in section 29A of
the Income Tax Act, 1962, with a valuation date before the commence- 10
ment of the relevant tax period [and particulars of which shall be
lodged with the Financial Services Board before the end of the
relevant tax period and found acceptable by such Board];”;
- (b) by the substitution for the definition of “insurer” of the following definition:
- “insurer” means any **[company registered to carry on long-term** 15
insurance business as defined in section 1 of the Insurance Act, 1943
(Act 27 of 1943)] long-term insurer as defined in section 1 of the
Long-term Insurance Act, 1998 (Act No. 52 of 1998).
- (2) Subsection (1) shall be deemed to have come into operation on 1 March 2000, and shall apply in respect of any tax period commencing on or after that date. 20

Amendment of section 3 of Act 38 of 1996

- 86.** Section 3 of the Tax on Retirement Funds Act, 1996, is hereby amended—
- (a) by the substitution for the formula of the following formula:
- “ $A = I + (R - E) + D$ ”;
- (b) by the deletion of “and” at the end of paragraph (c); 25
- (c) by the addition of “and” at the end of paragraph (d); and
- (d) by the addition of the following paragraph:
- “(e) “D” represents the amount of any foreign dividends received by or 30
accrued to such fund during such tax period as determined in accordance
with the provisions of section 9E of the Income Tax Act, 1962 (Act No.
58 of 1962).”.

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999

- 87.** Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended—
- (a) by the deletion of subparagraph (ii) of paragraph (a) of subsection (1); and 35
- (b) by the deletion of subparagraph (vii) of paragraph (b) of subsection (1).

Amendment of section 16 of Act 31 of 1998

- 88.** Section 16 of the Uncertificated Securities Tax Act, 1998, is hereby amended—
- (a) by the substitution for paragraph (b) of subsection (8) of the following 40
paragraph:
- “(b) have the same powers—
- (i) to enforce the attendance of witnesses and to compel them to give 45
evidence or to produce evidential material; and
- (ii) relating to contempt committed during the proceedings,
as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962 (Act No. 58 of 1962), and for those

purposes sections 84 and 85 of that Act shall apply *mutatis mutandis*; and”;

- (b) by the substitution for subsections (11), (12) and (13) of the following subsections:

“(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present **[throughout]** at the inquiry during such time as his affairs are investigated, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to **[a representative of his choice]** have a legal representative present during the time that he appears before the presiding officer.

(13) An inquiry contemplated in this section shall **[not be public]** be private and confidential and the presiding officer shall at any time on application **[of]** by the person whose affairs are investigated or any other person giving evidence or the person contemplated in subsection (1), exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.”;

- (c) by the addition of the following subsections:

“(15) Subject to subsection (16), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with such person is a party.

(16) (a) No person may refuse to answer any question during an inquiry on the grounds that it may incriminate him.

(b) No incriminating evidence so obtained shall be admissible in any criminal proceedings against the person giving such evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers or a failure to answer questions lawfully put to him, fully and satisfactorily.

(17) An inquiry in terms of this section shall proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person contemplated in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of that inquiry.”.

Insertion of section 7A in Act 50 of 1998

89. The following section is hereby inserted after section 7 of the Demutualisation Levy Act, 1998:

“Exemption from income tax

7A. There shall be exempt from income tax the receipts and accruals of the Umsobomvu Fund.”.

Amendment of section 3 of Act 126 of 1998

90. (1) Section 3 of the Eskom Amendment Act, 1998, is hereby amended—

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

“(1) **[Subject to subsections (2) and (3)]** Section 24 of the principal Act is hereby repealed.”; and

- (b) by the deletion of subsections (2) and (3).

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2000.

Amendment of section 4 of Act 9 of 1999, as amended by section 112 of Act 53 of 1999

91. Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) any **[religious or charitable institution]** public benefit organisation contemplated in section **[10(1)(f)] 10(1)(cN)** of the Income Tax Act, **[or any fund contemplated in section 10(1)(fA) of the Income Tax Act, established solely to provide funds to any such institution]** which solely carries on any religious or charitable public benefit activity determined by the Minister of Finance in terms of section 30 of that Act or any public benefit organisation which provides funds solely to such public benefit organisation which so carries on such public benefit activity; or”.

Amendment of section 5 of Act 9 of 1999

92. (1) Section 5 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Any employer that is exempt from the payment of the levy as contemplated in section 4(a), (c), **[and] (d) and (e)**, must register in terms of subsection (1).”.

(2) Subsection (1) shall be deemed to have come into operation on 24 November 1999.

Amendment of section 13 of Act 9 of 1999

93. (1) Section 13 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) representative taxpayers **[as contained in the Fourth Schedule to the Income Tax Act]**”.

(2) Subsection (1) shall be deemed to have come into operation on 1 September 1999.

Short title and commencement

94. (1) This Act shall be called the Taxation Laws Amendment Act, 2000.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2001.

Schedule 1

RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 2001 AND 30 JUNE 2001, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2001

(Section 12)

1. The rates of normal tax referred to in section 12 of this Act in respect of persons (other than companies) are as follows:

- (a) In respect of the taxable income of any person (other than a company or a person in respect of which subparagraph (b) applies), an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax
Where the taxable income— does not exceed R35 000	18 per cent of each R1 of the taxable income;
exceeds R35 000 but does not exceed R45 000	R6 300 plus 26 per cent of the amount by which the taxable income exceeds R35 000;
" R45 000 " " " " R60 000	R8 900 plus 32 per cent of the amount by which the taxable income exceeds R45 000;
" R60 000 " " " " R70 000	R13 700 plus 37 per cent of the amount by which the taxable income exceeds R60 000;
" R70 000 " " " " R200 000	R17 400 plus 40 per cent of the amount by which the taxable income exceeds R70 000;
" R200 000	R69 400 plus 42 per cent of the amount by which the taxable income exceeds R200 000.

- (b) in respect of the taxable income of any trust (other than a special trust), an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax
Where the taxable income— does not exceed R100 000	32 per cent of each R1 of the taxable income;
exceeds R100 000	R32 000 plus 42 per cent of the amount by which the taxable income exceeds R100 000.

2. The rates of normal tax referred to in section 12 of this Act in respect of companies are, subject to the provisions of paragraph 4, as follows:

- (a) On each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f), (g) and (h)), 30 cents, or, in the case of a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 38 cents;
- (b) in respect of the taxable income of any company which qualifies as a small business corporation, on each rand of the taxable income as does not exceed R100 000, 15 cents, and on each rand of the taxable income of such company as exceeds R100 000, 30 cents;

- (c) on each rand of the taxable income of any employment company, 35 cents;
- (d) on each rand of the taxable income derived by any company from mining for gold on any gold mine (with the exclusion of so much of the taxable income as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of the Income Tax Act, 1962), a percentage determined in accordance with the formula:

$$y = 37 - \frac{185}{x}$$

or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:

$$y = 46 - \frac{230}{x}$$

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (e) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 30 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from gold mining for the period from 1 July 1916 to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (f) on each rand of the taxable income derived by any company from carrying on long-term insurance business in respect of its individual policyholder fund, company policyholder fund and corporate fund, 30 cents;
- (g) on each rand of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f) and (h)) derived by a company which has its place of effective management outside the Republic and which carries on a trade through a branch or agency within the Republic, 35 cents;
- (h) on each rand of the taxable income derived by a qualifying company as contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero cents:

Provided that the tax determined in accordance with any of subparagraphs (a) to (h), inclusive, shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

3. That the rates set forth in paragraphs 1 and 2 shall be the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.

4. For the purposes of—

- (a) paragraph 1, a "special trust" means a trust created solely for the benefit of a person who suffers from—

- (i) any “mental illness” as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or
 - (ii) any serious physical disability,
where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person: Provided that where the person for whose benefit the trust was so created dies before or on 28 February 2001, such trust shall be deemed not to be a special trust for the purposes of paragraph 1;
- (b) paragraph 2(b) and (c)—
- (i) “small business corporation” means any close corporation or any company incorporated as a private company in terms of the Companies Act, 1973 (Act No. 61 of 1973), the entire shareholding of which is at all times during the year of assessment held by shareholders or members that are natural persons, where—
 - (aa) the gross income of the close corporation or company for the year of assessment does not exceed R1 million;
 - (bb) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1 of the Income Tax Act, 1962 (other than a company listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or any unit portfolio contemplated in paragraph (e) of the definition of “company” in section 1 of the said Act); and
 - (cc) not more than 20 per cent of the gross income of the company or close corporation consists collectively of investment income and income from the rendering of a personal service;
 - (dd) such company is not an employment company;
 - (ii) “personal service” means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science, which is performed personally by any person who holds an interest in the company or close corporation referred to in the definition of “small business corporation”;
 - (iii) “investment income” means any investment income as defined in section 9C of the Income Tax Act, 1962, and includes—
 - (aa) dividends; and
 - (bb) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;
 - (iv) “employment company” means any company—
 - (aa) which is a labour broker as defined in the Fourth Schedule to the said Act, other than a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5) of the said Schedule; or
 - (bb) which is a personal service company as defined in the Fourth Schedule to the said Act; and
- (c) paragraph 2(d) and (e), income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.

5. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

Schedule 2

AMENDMENT OF SCHEDULE NO. 1 TO THE CUSTOMS AND
EXCISE ACT, 1964

(Section 64)

Tariff item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		By the substitution for tariff item 104.00 of the following:		
“104.00		PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO		
104.01	19.01	MALT EXTRACT; FOOD PREPARATIONS OF FLOUR, MEAL, STARCH OR MALT EXTRACT, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS, OF LESS THAN 50 PER CENT, NOT ELSEWHERE SPECIFIED OR INCLUDED; FOOD PREPARATIONS OF GOODS OF HEADINGS NOS. 04.01 TO 04.04, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS, OF LESS THAN 10 PER CENT, NOT ELSEWHERE SPECIFIED OR INCLUDED:		
.10		Preparations, based on sorghum flour, put up for making beverages	33c/kg	33c/kg
104.05	22.01	WATERS, INCLUDING NATURAL OR ARTIFICIAL MINERAL WATERS AND AERATED WATERS, NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER NOR FLAVOURED; ICE AND SNOW		
	22.02	WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER NON-ALCOHOLIC BEVERAGES (EXCLUDING FRUIT OR VEGETABLE JUICES OF HEADING NO. 20.09):		
.10		Mineral waters, including spa waters and aerated waters, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	8c/l	8c/l
.20		Lemonade and flavoured mineral waters, including flavoured spa and aerated waters, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	8c/l	8c/l
.30		Non-alcoholic beverages not elsewhere specified or included in this tariff item, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	8c/l	8c/l
104.10	22.03	BEER MADE FROM MALT	2 239c/l of absolute alcohol	2 239c/l of absolute alcohol

104.15	22.04	WINE OF FRESH GRAPES, INCLUDING FORTIFIED WINES; GRAPE MUST, OTHER THAN THAT OF HEADING NO. 20.09		
	22.05	VERMOUTHS AND OTHER WINE OF FRESH GRAPES FLAVOURED WITH PLANTS OR AROMATIC SUBSTANCES		
	22.06	OTHER FERMENTED BEVERAGES (FOR EXAMPLE, CIDER, PERRY AND MEAD):		
.05		Sorghum beer (excluding beer made from preparations based on sorghum flour)	745c/ 100l	745c/ 100l
.10		Unfortified still wine	6 790c/ 100l	6 790c/ 100l
.40		Fortified still wine	15 360c/ 100l	15 360c/ 100l
.50		Other still fermented beverages, unfortified	11 398c/ 100l	11 398c/ 100l
.60		Other still fermented beverages, fortified	20 213c/ 100l	20 213c/ 100l
.70		Sparkling wine	18 811c/ 100l	18 811c/ 100l
.80		Other fermented beverages (excluding sorghum beer)	24 041c/ 100l	24 041c/ 100l
104.20	22.07	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF 80 PER CENT VOLUME OR HIGHER; ETHYLALCOHOL AND OTHER SPIRITS, DENATURED, OF ANY STRENGTH		
	22.08	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF LESS THAN 80 PER CENT VOLUME; SPIRITS, LIQUEURS AND OTHER SPIRITUOUS BEVERAGES:		
.10		Wine spirits, manufactured in the Republic by the distillation of wine	303 365c/ 100l of absolute alcohol	-
.15		Spirits, manufactured in the Republic by the distillation of any sugar cane product	303 365c/ 100l of absolute alcohol	-
.25		Spirits, manufactured in the Republic by the distillation of any grain product	303 365c/ 100l of absolute alcohol	-
.29		Other spirits, manufactured in the Republic	303 365c/ 100l of absolute alcohol	
.60		Imported spirits of any nature, including spirits in imported spirituous beverages (excluding liqueurs, cordials and similar spirituous beverages containing added sugar) and in compound alcoholic preparations of an alcoholic strength exceeding 1,713 per cent alcohol by volume		293 752c/ 100l of absolute alcohol or 126 313c/ 100l
.70		Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances		293 752c/ 100l of absolute alcohol.
104.30	24.02	CIGARS, CHEROOTS, CIGARILLOS AND CIGARETTES, OF TOBACCO OR OF TOBACCO SUBSTITUTES		

.10		Cigars	56 989c/ kg net	56 989c/ kg net
.20		Cigarettes	141,5c/10 cigarettes	141,5c/10 cigarettes
104.35	24.03	OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES, 'HOMOGENISED' OR 'RECONSTITUTED' TO- BACCO EXTRACTS AND ESSENCES:		
.10		Cigarette tobacco	6 412c/ kg	6 412c/ kg
.20		Pipe tobacco	3 893c/ kg net	3 893c/ kg net''.

