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REPUBLIC OF SOUTH AFRICA

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**EXCHANGE CONTROL AMNESTY  
AND AMENDMENT OF TAXATION  
LAWS BILL**

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*(As introduced in the National Assembly as a money Bill)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B - 2003]

## GENERAL EXPLANATORY NOTE:

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

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

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## BILL

To provide for exchange control amnesty with accompanying tax measures in respect of voluntary disclosure by an applicant, advisor or physical facilitator of any contravention of the Exchange Control Regulations or failure to comply with the provisions of the Income Tax Act, 1962, to the extent it relates to foreign assets; to amend the Transfer Duty Act, 1949, so as to adjust the rates of duty; to fix the rates of normal tax payable by persons other than companies in respect of taxable income for the years of assessment ending on 29 February 2004 and by companies in respect of taxable income for the years of assessment ending during the 12 months ending on 31 March 2004; to amend the Income Tax Act, 1962, so as to amend a definition; to further regulate the provisions relating to secrecy to provide for exchange of information between the Commissioner and the South African Reserve Bank; to increase the primary and secondary rebates; to further regulate the exemption in respect of interest and foreign dividends; to increase the income threshold of small business corporations; to further regulate the provisions relating to trading stock in consequence of the exchange control amnesty and accompanying tax measures; to further regulate the secondary tax on companies where a company ceases to be a resident; to further regulate the provisions relating to capital gains tax in consequence of the exchange control amnesty and accompanying tax

measures; to amend the Customs and Excise Act, 1964, so as to further regulate the provisions relating to secrecy to provide for exchange of information between the Commissioner and the South African Reserve Bank; to increase the rate of the air passenger tax; and to amend Schedule No. 1 to the said Act and the effective date thereof; to amend the Stamp Duties Act, 1968, so as to delete certain definitions; to abolish stamp duty on certain instruments; and to effect certain consequential amendments; to amend the South African Reserve Bank Act, 1989, so as to further regulate the provisions relating to secrecy to provide for exchange of information between the South African Reserve Bank and the Commissioner; to amend the Value-Added Tax Act, 1991, so as to increase the threshold of rental income in the definition of “commercial accommodation”; to further regulate the provisions relating to secrecy to provide for exchange of information between the Commissioner and the South African Reserve Bank; to amend the Tax on Retirement Funds Act, 1996, so as to reduce the rate at which the tax on retirement funds is imposed; and to provide for the continuation of amendments to the Schedules to the Customs and Excise Act, 1964; to provide for a short title and commencement date of this Act; and to provide for matters connected therewith

## **PREAMBLE**

**RECOGNISING** that the objectives of the exchange control amnesty and accompanying tax measures are—

- (a) to enable applicants who have contravened the Exchange Control Regulations or failed to comply with the Income Tax Act, 1962, relating to foreign assets derived from legitimate sources to regularise their affairs;
- (b) to ensure maximum disclosure of foreign assets and to facilitate repatriation thereof to the Republic; and

- (c) to extend the tax base by disclosing previously unreported foreign assets for purposes of taxing the revenue flows and capital gains.

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

**CHAPTER I**  
**EXCHANGE CONTROL AMNESTY AND ACCOMPANYING TAX**  
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## *Part A*

### *Definitions, Administration and Application*

#### **Definitions**

1. For purposes of this Chapter—

“advisor” means a person who advised any other person on or before 28 February 2003, on any method of—

- (a) accumulating foreign assets; or
- (b) transferring funds or assets from the Republic,

that involves any contravention of the Exchange Control Regulations;

“amnesty levy” means the levy imposed in terms of section 10;

“amnesty unit” means the amnesty unit established in terms of section 19;

“applicant” means any person contemplated in section 3(a) or (b);

“application” means the application contemplated in section 4;

“authorised dealer” means a person who is authorised by the Minister, or by an officer in the National Treasury who deals with exchange control matters on the authority of the Minister, to deal in foreign exchange;

“Commissioner” means the Commissioner for the South African Revenue Service appointed in terms of section 13 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

“date of approval” means the date on which the notice of approval was delivered by the amnesty unit to the applicant, as contemplated in section 8(6);

“deliver” in relation to a notice means—

- (a) handing that notice to the relevant person;
- (b) sending that notice to the relevant person by registered post;
- (c) transmitting that notice to the relevant person by facsimile; or
- (d) transmitting that notice to the relevant person by electronic means:

Provided that in the case of paragraphs (c) and (d), the notice must be handed to the relevant person or sent by registered post to that person within ten days of it being so transmitted by facsimile or electronic means;

“Exchange Control Regulations” means the Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), as amended;

“financial instrument” means a financial instrument as defined in section 1 of the Income Tax Act, 1962;

“foreign assets” means any funds held in foreign currency and assets transferred from or accumulated outside the Republic, but does not include any financial instrument where the identity of the beneficial owner thereof cannot be determined by reference to either that instrument or the person who issued that financial instrument;

“General Manager” means the General Manager of the Exchange Control Department of the South African Reserve Bank;

“Governor” means the person appointed as the Governor of the South African Reserve Bank in terms of section 4 or 6 (1) (a) of the South African Reserve Bank Act, (Act No. 90 of 1989);

“held” or “hold” in relation to a foreign asset means—

- (a) a direct beneficial ownership in that foreign asset; or
- (b) holding that foreign asset in a fiduciary capacity otherwise than as a nominee,

and includes a deemed holding of that foreign asset by a donor or beneficiary of a discretionary trust in terms of section 3(2);

“Income Tax Act” means the Income Tax Act (Act No. 58 of 1962);

“market value” in relation to a foreign asset of a person means the market value as contemplated in paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, translated into Rand at the closing spot rate on 28 February 2003;

“Minister” means the Minister of Finance;

“person” means a person as defined in section 1 of the Income Tax Act, 1962;

“physical facilitator” means a natural person who on or before 28 February 2003, physically assisted an applicant—

- (a) by accumulating foreign assets; or
- (b) by transferring funds or assets from the Republic,

for the benefit of that applicant in a manner that involves any contravention of the Exchange Control Regulations and those foreign assets are no longer held by that person;

“resident” means, in respect of income tax matters, a resident as defined in section 1 of the Income Tax Act, 1962 and, in respect of exchange control matters, a resident as defined in the Exchange Control Regulations

“South African Revenue Service” means the South African Revenue Service established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

“unauthorised assets” means any funds or assets which—

- (a) were accumulated outside the Republic; or
- (b) were transferred from the Republic,

in contravention of the Exchange Control Regulations;

“unlawful activities” means unlawful activities as defined in the Prevention of Organised Crime Act, 1998, (Act No. 121 of 1998), other than any exchange control contravention or failure to comply with any revenue Act for which amnesty is being applied in terms of this Chapter; and

“year of assessment” means a year of assessment as defined in the Income Tax Act, 1962.

## **Administration of Chapter**

**2.** This Chapter is administered by the Chairperson of the amnesty unit in consultation with—

- (a) the General Manager to the extent it relates to the exchange control relief of the amnesty contemplated in Part C; and
- (b) the Commissioner to the extent that it relates to the tax relief of the amnesty contemplated in Part D .

## **Persons who may apply for amnesty**

- 3.** (1) The following persons may apply for amnesty in terms of this Chapter:
- (a) any natural person who is a resident and who on 28 February 2003 held any foreign assets, the value of which, in whole or in part, represents or has been derived from any unauthorised assets;
  - (b) any natural person who is a resident and who on 28 February 2003 held any foreign assets the value of which, in whole or in part, represents or has been derived from amounts that were not declared or paid over to the Commissioner as required in terms of any revenue Act;
  - (c) any advisor; and
  - (d) any physical facilitator.

(2) A person who—

- (a) made a donation of any funds or assets which are represented by any foreign asset contemplated in subsection (1)(a) that are held by a discretionary trust which is not a resident; or
- (b) is a beneficiary with a contingent right to any foreign asset contemplated in subsection (1)(a) of a discretionary trust which is not a resident,

may, for the purposes of this Chapter, elect that any foreign asset of that discretionary trust be deemed to be held by that donor or that beneficiary, as the case may be, with effect from 28 February 2003 and that foreign asset shall be deemed to be so held by that donor or beneficiary for all purposes of any revenue Act, until that foreign asset is disposed of by that discretionary trust to any person other than that donor or beneficiary, as the case may be.

### *Part B*

#### *Application, evaluation and approval process*

### **Period for amnesty application**

4. An applicant, advisor or physical facilitator applying for amnesty contemplated in this Chapter must submit an application by way of a sworn affidavit or solemn declaration to the amnesty unit during the period commencing 1 May 2003 and ending 31 October 2003, in the form and manner as may be prescribed by the amnesty unit.

#### **Required information for application by applicant**

5. (1) An applicant contemplated in section 3(1)(a) who applies for exchange control relief as contemplated in Part C in respect of any foreign asset, must—

- (a) disclose the market value of that foreign asset on 28 February 2003 which is held by that applicant on that date wholly or partly in contravention of the Exchange Control Regulations;
- (b) disclose to what extent the market value of that foreign asset represents or has been derived from any unauthorised assets;
- (c) include a description of the identifying characteristics and the location of that foreign asset;
- (d) submit in respect of the market value in foreign currency of that foreign asset—
  - (i) a valuation certificate by a valuator of the country where that foreign asset is located;
  - (ii) a valuation by a sphere of government of the country where that foreign asset is located; or
  - (iii) any other form of proof of value of that foreign asset as the amnesty unit may on good cause shown allow;
- (e) submit original or certified copies of statements of account relating to any foreign asset which constitute a foreign financial instrument for the period starting 28 February 2003 and ending on the date of submission of the application in terms of section 4;
- (f) state whether or not that foreign asset wholly or partly represents or has been derived from the proceeds of any unlawful activities.

(2) An applicant who applies for the tax relief as contemplated in section 14(1), must—

- (a) disclose the total amount of all receipts and accruals for the last year of assessment of that applicant ending on or before 28 February 2003, which relates to any foreign asset held by that applicant on that date, in respect of which foreign asset that applicant in any previous year of assessment failed to declare any receipts or accruals;
- (b) include a description of the identifying characteristics and the location of that foreign asset; and
- (c) submit original or certified copies of statements of account relating to any foreign asset which constitute a foreign financial instrument for the period starting 28 February 2003 and ending on the date of submission of the application in terms of section 4;

(3) An applicant contemplated in subsection (2) must submit to the Commissioner an income tax return for the last year of assessment ending on or before 28 February 2003, within the period notified by the Commissioner, unless extension has been granted by the Commissioner for the submission of that return.

(4) For purposes of subsection (1)(b), where the market value of a foreign asset held by an applicant partly represents, or has been partly derived from unauthorised assets, that foreign asset must, to the extent that the applicant cannot prove that it represents or has been derived from funds or assets which would have been legally held by that applicant outside the Republic had those funds or assets been acquired on 28 February 2003, be deemed to represent or to have been derived from unauthorised assets.

### **Statement of foreign assets and liabilities for tax relief**

6. (1) An applicant contemplated in section 3(1)(b) must attach to the application a statement of assets and liabilities of that applicant as at the last day of the last year of assessment ending on or before 28 February 2002, in

respect of all foreign assets and liabilities outside the Republic, reflecting all such foreign assets at both historical cost and market value.

(2) The provisions of section 78(1A) of the Income Tax Act, 1962, shall apply *mutatis mutandis* where an applicant fails to comply with subsection (1).

### **Required information for application by advisor and physical facilitator**

7. (1) An advisor who applies for the amnesty in terms of Part C, must –
- (a) disclose the sanitised method and structures of the advice by which the Exchange Control Regulations were circumvented and the income from foreign assets failed to comply with the Income Tax Act, 1962; and
  - (b) confirm that at the time of giving advice on the method of transferring funds or assets from or accumulating foreign assets outside the Republic, he or she had no reason to believe that any of those funds, assets or foreign assets of any person so advised, represented or were derived from proceeds of unlawful activities.
- (2) A physical facilitator who applies for the amnesty in terms of this Chapter, must—
- (a) disclose the sanitised method and structures of the assistance by which the Exchange Control Regulations were circumvented; and
  - (b) confirm that at the time of so accumulating foreign assets or transferring funds or assets from the Republic for the benefit of that applicant, there was no reason for that physical facilitator to believe that any of those funds, assets or foreign assets represented or were derived from proceeds of unlawful activities.

### **Evaluation and Approval**

8. (1) If an applicant applying for exchange control relief as contemplated in Part C complies with section 5(1) in relation to a foreign asset, the amnesty unit must, subject to section 9, grant approval that the provisions of Part C

apply in respect of that foreign asset to the extent of the disclosure made by that applicant in terms of section 5(1) in respect of that foreign asset.

(2) To the extent that an applicant applying for tax relief contemplated in section 14(1) complies with section 5(2) in respect of any receipts and accruals with respect to any foreign asset, the amnesty unit must, subject to section 9, grant approval that the provisions of section 14(1) apply in respect of those receipts and accruals.

(3) If an advisor or physical facilitator applying for exchange control relief as contemplated in Part C complies with section 7, the amnesty unit must, subject to section 9, grant approval that the provisions of that Part apply in respect of that advisor or physical facilitator.

(4) The amnesty unit must deliver to an applicant a notice of its decision.

### **Circumstances where amnesty unit may not grant approval**

**9.** (1) The amnesty unit shall not approve any application for tax relief contemplated in Part D, if the Commissioner has indicated that the applicant had not yet submitted an income tax return for the last year of assessment ending on or before 28 February 2003 and no extension for the submission of that return was granted by the Commissioner.

(2) The amnesty unit shall not grant approval in terms of section 8 in respect of an applicant, advisor or physical facilitator, where—

- (a) that applicant, advisor or physical facilitator did not submit his or her application within the period contemplated in section 4; or
- (b) either the General Manager or the Commissioner has, before the submission of the application in terms of section 4, delivered a notice to that applicant, advisor or physical facilitator or his or her representative that he or she is subject to an audit, investigation or other enforcement action relating to any contravention of the Exchange Control Regulations or failure to comply with the Income Tax Act, unless that notice is subsequently withdrawn by the General Manager or the

Commissioner, as the case may be, before the last day of the period contemplated in section 4.

(3) The amnesty unit must deliver to an applicant a notice of its decision to deny the application and must set out the reasons therefor.

(4) Any approval granted by the amnesty unit that is inconsistent with this section shall be void.

### *Part C*

#### *Exchange Control Relief in terms of Amnesty*

#### **Imposition of amnesty levy**

**10.** An applicant in respect of whom approval has been granted in terms of section 8(1) is subject to an amnesty levy in respect of the leviable amount determined by deducting from the amount disclosed as contemplated in section 5(1)(b), the amount that the applicant would have been legally entitled to transfer from the Republic as at 28 February 2003 in terms of Regulation 10 of the Exchange Control Regulations had there been full compliance by that applicant with those Exchange Control Regulations.

#### **Amount of amnesty levy**

**11.** (1) The amnesty levy is equal to—

- (a) 5 per cent of the leviable amount contemplated in section 10 that is repatriated to the Republic (other than any funds repatriated for purposes of paying the levy contemplated in paragraph (b)) and converted into Rand through an authorised dealer within three months after the date of approval; or
- (b) 10 per cent of the amount remaining of the leviable amount contemplated in section 10 after deducting the amount repatriated as contemplated in paragraph (a).

(2) The amnesty unit may extend the period contemplated in subsection (1)(a) by a further period of no more than three months to the extent that an applicant proves that an amount which that applicant wishes to repatriate cannot reasonably be converted into Rand within that period.

### **Payment of amnesty levy**

**12.** (1) All amounts owed in respect of the amnesty levy as converted into Rand must be paid by an applicant to an authorised dealer from foreign assets or from amounts repatriated in terms of section 11(1)(a) by no later than—

- (a) in the case of the levy contemplated in section 11(1)(a), the date of repatriation and conversion; or
- (b) in the case of the levy contemplated in section 11(1)(b), three months after the date approval is granted.

(2) The authorised dealer must pay all amounts received in terms of subsection (1) into the Corporation for Public Deposits for subsequent transfer to the National Revenue Fund.

(3) The amnesty unit may extend the period contemplated in subsection (1)(b) by a further period of no more than three months to the extent that an applicant proves that an amount which that applicant wishes to repatriate cannot reasonably be converted into Rand within that period.

### **Exchange Control Relief**

**13.** (1) An applicant who has been granted approval in terms of section 8(1) is deemed not to have contravened the Exchange Control Regulations in respect of—

- (a) the amount disclosed as contemplated in section 5(1)(b) in respect of all foreign assets so disclosed; and

(b) all other foreign assets which are no longer held by that applicant as at 28 February 2003.

(2) An advisor in respect of whom approval was granted in terms of section 8(4), is deemed not to have contravened the Exchange Control Regulations in respect of any advice given on or before 28 February 2003.

(3) A physical facilitator in respect of whom approval was granted in terms of section 8(4) is deemed not to have contravened the Exchange Control Regulations in respect of any foreign assets accumulated outside the Republic or funds or assets transferred from the Republic for the benefit of an applicant, in respect of which that physical facilitator has made disclosure in terms of section 7(2).

#### *Part D*

#### *Tax Relief in terms of Amnesty*

#### **Exemption from payment of tax and duty**

**14.** (1) An applicant in respect of whom approval for amnesty has been granted in terms of section 8(2), shall not be liable for the payment of any income tax in respect of any year of assessment of that applicant ending on or before 28 February 2002, which may be imposed in terms of the Income Tax Act, 1962, in respect of any amount to the extent that it is derived from—

- (a) any foreign asset in respect of which that applicant has made disclosure in terms of sections 5(2) and 6; and
- (b) any other foreign asset which is no longer held by that applicant as at the last day of the last year of assessment of that applicant which ends on or before 28 February 2003, excluding any asset which is no longer held as a result of a donation by that applicant.

(2) Subsection (1) does not apply in respect of any amount of tax or duty which—

- (a) had already been paid as at the date of application contemplated in section 4;

- (b) is payable or becomes payable by an applicant or physical facilitator in consequence of any return or information furnished to the Commissioner by that applicant, or any representative of that applicant, before the date of that application.

### **Exemption from additional tax and penalties**

15. An applicant in respect of whom approval for amnesty has been granted in terms of section 8, shall not be liable for the payment of any penalties or additional tax which may be imposed in terms of the Income Tax Act, 1962, in respect of any tax as contemplated in section 14(1).

### **Indemnity from criminal prosecution**

16. An applicant in respect of whom approval has been granted in terms of section 8 shall be deemed not to have failed to comply with the provisions of the Income Tax Act, which relates to—

- (a) any foreign assets in respect of which that applicant has made disclosure in terms of section 5(2); or
- (b) any foreign assets which are no longer held by the applicant as at 28 February 2003, excluding any asset which is no longer held as a result of a donation by that applicant.

## *Part E*

### *Withdrawal of approval and review of decision*

### **Withdrawal or invalidity of approval**

17. (1) The amnesty unit may withdraw the approval granted in terms of section 8—

- (a) where the amount of the levy on foreign assets is not paid by the applicant within the period prescribed in section 12; or
- (b) in respect of the tax relief in terms of the amnesty as contemplated in Part D, where the applicant in respect of which extension was granted for the submission of that applicant's tax return, fails to submit that return on or before 28 February 2004.

(2) The amnesty unit must deliver a notice of withdrawal to the applicant and must set out the reasons therefor.

(3) Where it is at any stage determined that any foreign asset in respect of which approval for amnesty has been granted wholly or partly represents or has been derived from the proceeds of any unlawful activities, that approval shall be void and any levy paid by the applicant based on that approval shall be forfeited.

### **Review of decision of amnesty unit**

**18.** Any person who feels aggrieved by a decision of the amnesty unit under this Chapter, may apply to the High Court for the review of that decision or for other appropriate relief.

## *Part F*

### *Establishment of and provisions relating to amnesty unit*

#### **Establishment**

**19.** (1) There is hereby established a body to be known as the amnesty unit.

(2) The amnesty unit acts as an independent body that evaluates all applications for amnesty and grants or denies approval in respect of any such application.

(3) The Minister may provide in such manner as he or she deems fit for the proper functioning of the amnesty unit.

## **Constitution**

**20.** (1) The amnesty unit consists of—

- (a) a chairperson appointed by the Minister; and
  - (b) a number of persons appointed by the Minister, drawn from the South African Reserve Bank and the South African Revenue Service.
- (2) The Minister must consult the Governor and the Commissioner before appointing the chairperson and the persons contemplated in subsection (1).
- (3) A person contemplated in subsection (1) must—
- (a) be a fit and proper person; and
  - (b) have appropriate expertise, skills, knowledge or experience and the ability to perform effectively as a member of the amnesty unit.

## **Powers, functions and duties**

**21.** (1) The amnesty unit—

- (a) evaluates all applications for amnesty contemplated in section 4;
  - (b) grants or denies approval of an application in terms of this Chapter; and
  - (c) may withdraw any approval in the circumstances contemplated in section 17.
- (2) The powers and functions of the amnesty unit must not, subject to Parts C and D, be construed to interfere with the powers and functions assigned to the General Manager by the Minister in terms of the Exchange Control Regulations or assigned to the Commissioner in terms of any Act administered by him or her, in so far as those powers and functions of the General Manager or Commissioner relate to—
- (a) the interpretation of those Regulations or any such Act;
  - (b) the exercise of a discretion conferred on the General Manager or Commissioner by those Regulations or any such Act; or

(c) the determination by the Commissioner of the liability of a person for any tax or duty in terms of any such Act.

(3) The provisions of section 4 of the Income Tax Act, 1962, shall apply *mutatis mutandis* in respect of any member of the amnesty unit.

## **Procedures**

22. The amnesty unit may determine its own procedures.

## **Disclosure of interest**

23. A member of the amnesty unit who has a personal or financial interest in any matter on which the amnesty unit must decide, must disclose that interest and withdraw from the proceedings of the amnesty unit when that matter is being considered and evaluated.

## *Part G*

### *Miscellaneous*

## **Reporting**

24. (1) The Chairperson of the amnesty unit must provide to—

- (a) the Minister—
  - (i) a list of all applications for the exchange control relief in terms of the amnesty—
    - (aa) indicating in respect of each application whether or not it was approved;
    - (bb) containing the details of the amounts of the relief granted; and
    - (cc) containing details of the amounts of levy payable in terms of Part C in respect of each such application; and

- (ii) a summary of the sanitised methods and structures which were disclosed under section 7 (1) (a) and 7 (2) (a); and
  - (b) the Minister and the Auditor-General a list of all applications for the tax relief in terms of the amnesty—
    - (i) indicating in respect of each application whether or not it was approved;
    - (ii) containing the details of the amounts from foreign sources which have been declared in respect of the year of assessment ending on or before 28 February 2003, which relate to foreign assets in respect of which approval for amnesty has been granted.
- (2) The list contemplated in subsection (1) must—
- (a) be in a form that does not disclose the identity of any applicant, advisor or physical facilitator concerned; and
  - (b) be submitted at such time as may be agreed between the General Manager or the Commissioner, as the case may be, and the Auditor-General or Minister, as the case may be.
- (3) The Minister must report to Parliament on—
- (a) the number of applicants, advisors and physical facilitators, respectively, who have applied for amnesty;
  - (b) the total market value of all foreign assets which have been disclosed in terms of the amnesty;
  - (c) the total amount of all levies paid by all applicants;
  - (d) the total amount from foreign sources disclosed in terms of section 5.

### **Use of information supplied where approval not granted**

**25.** No information submitted by an applicant, advisor or physical facilitator in terms of section 5, 6 and 7 may be used by the General Manager or the Commissioner where approval in respect of that applicant, advisor or physical facilitator was denied as contemplated in section 9, except—

- (a) with the knowledge and consent of the applicant, advisor or physical facilitator concerned;

- (b) where such information is already known to, or in the possession of, the General Manager or the Commissioner, as the case may be;
- (c) where such information is obtained by the General Manager or the Commissioner, as the case may be, otherwise than by way of the application in terms of section 4; or
- (d) where it is at any stage determined that any foreign asset in respect of which approval for amnesty has been granted wholly or partly represents or has been derived from the proceeds of any unlawful activities.

## **Offences**

**26.** Any person who makes or causes or allows to be made any false statement in any application or in submitting any information to the amnesty unit in terms of this Chapter without reasonable grounds for believing that statement to be true, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

## **Regulations**

- 27.** The Minister may make regulations—
- (a) prescribing the termination of the amnesty unit and the control of the information in the possession of the amnesty unit;
  - (b) to address any unintended consequences, anomalies or incongruities that may arise with regard to—
    - (i) the application of these provisions to foreign assets held by a discretionary trust which is not a resident, as contemplated in section 3(2);
    - (ii) foreign assets held by an applicant indirectly by way of shareholding in a company;

- (iii) the change of residence of any applicant or physical facilitator;  
or
- (iv) the determination of the extent to which any foreign asset represents or was derived from—
  - (aa) any unauthorised assets; or
  - (bb) any amount which was not declared or paid to the Commissioner in terms of any revenue Act, as contemplated in section 5, 6 and 7; and
- (c) for generally giving effect to the objects and purposes of this Chapter.

## CHAPTER II GENERAL AMENDMENTS TO TAXATION LAWS

**Amendment of section 2 of Act 40 of 1949, as substituted by section 2 of Act 77 of 1964 and amended by section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act 87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993, section 1 of Act 37 of 1995, section 9 of Act 37 of 1996, section 2 of Act 32 of 1999 and section 2 of Act 30 of 2002**

**28.** (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) subject to the provisions of subsection (5)—
- (i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R100 000]** R140 000;
  - (ii) 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R100 000]** R140 000 but does not exceed **[R300 000]** R320 000;  
and
  - (iii) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R300 000]** R320 000,

if the person **[by whom]** who acquires the property **[is acquired]** or in whose favour or for whose benefit the said interest or restriction is renounced is a natural person.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2003 and shall apply in respect of any property acquired, or interest or restriction in any property renounced, in terms of an agreement formally and finally signed on or after that date.

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

**29.** 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 29 February 2004; and
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2004,

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, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002 and section 6 of Act 74 of 2002**

**30.** (1) Section 1 of the Income Tax Act, 1962, is hereby amended by the addition after paragraph (b) of the definition of “resident” of the following words:

“but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation;”.

(2) Subsection (1) shall be deemed to have come into operation on 26 February 2003.

**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, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000, section 19 of Act 60 of 2001 and section 8 of Act 74 of 2002**

**31.** Section 4 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (1) to paragraph (c) of the following subparagraph:

“(iii) disclosing to the Governor of the Reserve Bank or any person acting under the Governor’s direction and control such information as may be required for purposes of exercising any power or performing any duty in connection with foreign

transactions under the provisions of the Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency And Exchanges Act, 1933 (Act No. 9 of 1933), as amended.”.

**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, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001 and section 11 of Act 30 of 2002**

**32.** Section 6 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

- “(a)** a primary rebate, an amount of **[R4 860] R5 400**; and
- (b)** a secondary rebate, if the taxpayer was or, had he lived, would have been over the age of 65 years on the last day of the year of assessment, an amount of **[R3 000] R3 100**.”.

**Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act**

**96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, section 9 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002 and section 18 of Act 74 of 2002**

**33.** Section 10 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subitems (A) and (B) of item *(bb)* of subparagraph (xv) of paragraph *(i)* of the following subitems:

- “(A) in the case of any person who was or, had he or she lived would have been, at least 65 years of age on the last day of the year of assessment, the amount of **[R10 000]** R15 000; or
- (B) in any other case, the amount of **[R6 000]** R10 000.”.

**Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002 and section 21 of Act 74 of 2002**

**34.** (1) Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the expression “R3 million” wherever it may occur in subparagraph (i) of paragraph *(a)* of the expression “R5 million”.

(2) Subsection (1) shall come into operation on 1 April 2003 and shall apply in respect of any year of assessment ending on or after that date.

**Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of**

**Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001 and section 24 of Act 74 of 2002**

**35.** Section 22 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (3) to paragraph (a) of the following subparagraph:

“(iii) in the case of any asset which constitutes a foreign asset as defined in section 1 of the Exchange Control Amnesty and Amensment of Taxation Laws Act, 2003 (Act No. ? of 2003), in respect of which approval for amnesty was granted in terms of section 8(2) of that Act, shall as at 28 February 2003 be the value in foreign currency of that foreign asset disclosed for purposes of determining the amnesty levy imposed in terms of that Act.”.

**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, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000 and section 37 of Act 74 of 2002**

**36.** (1) Section 64C of the Income Tax Act, 1962, is hereby amended by the addition to subsection (3) of the following paragraph:

“(f) the company ceases to be a resident to the extent profits and reserves of that company are available for distribution immediately before cessation (including any amount deemed in terms of the definition of ‘dividend’ in section 1 to be a profit available for distribution).”.

(2) Subsection (1) shall be deemed to have come into operation on 26 February 2003.

### **Insertion of paragraph 24A in Eighth Schedule to Act 58 of 1962**

**37.** The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 24:

#### **“Base cost of foreign asset subject to amnesty levy**

**24A.** The base cost of any asset which constitutes a foreign asset as defined in section 1 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. ? of 2003), in respect of which approval for amnesty was granted in terms of section 8(2) of that Act, shall be determined as in accordance with paragraph 24 as if that person became a resident on 1 March 2003 and market value of that asset on 28 February 2003 was equal to the value in foreign currency of that foreign asset disclosed for purposes of determining the amnesty levy imposed in terms of that Act.”.

**Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001 and section 43 of Act 30 of 2002**

**38.** Section 4 of the Customs and Excise Act, 1964, is hereby amended by the addition in subsection (3) to paragraph (b) of the following subparagraph:

“(iii) disclosing to the Governor of the Reserve Bank or any person acting under the Governor’s direction and control such

information as may be required for purposes of exercising any power or performing any duty in connection with foreign transactions under the provisions of the Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), as amended.”.

**Amendment of section 47B of Act 91 of 1964, as inserted by section 59 of Act 30 of 2000**

**39.** (1) Section 47B of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for the words in subparagraph (i) of paragraph (b) preceding the proviso of the following words:

“(i) The tax shall be charged at the rate of **[R100]** R110 on the carriage of each chargeable passenger departing on a flight:”.

(2) Subsection (1) shall come into operation on 1 July 2003, and shall apply to any carriage of a chargeable passenger on any flight which commences on or after that date: Provided that the provisions of subsection (1) shall not apply in respect of the carriage of any chargeable passenger, where the ticket in respect of such flight was purchased and issued before the date of promulgation.

**Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995,**

**section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001 and section 53 of Act 30 of 2002**

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

(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 26 February 2003.

**Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001 and section 141 of Act 60 of 2001**

**41.** (1) Section 1 of the Stamp Duties Act, 1968 is hereby amended by the deletion of the definitions of “fixed deposit” and “policy of life insurance”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2003.

**Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989 and section 55 of Act 19 of 2001**

**42.** (1) Section 7 of the Stamp Duties Act, 1968 is hereby amended by the deletion in subsection (1) of paragraph (i).

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2003.

**Repeal of section 21 of Act 77 of 1968**

- 43.** (1) Section 21 of the Stamp Duties Act, 1968 is hereby repealed.  
(2) Subsection (1) shall be deemed to have come into operation on 1 April 2003.

**Repeal of section 24 of Act 77 of 1968**

- 44.** (1) Section 24 of the Stamp Duties Act, 1968 is hereby repealed.  
(2) Subsection (1) shall be deemed to have come into operation on 1 April 2003.

**Repeal of Item 13 of Schedule 1 to Act 77 of 1968**

- 45.** (1) Item 13 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.  
(2) Subsection (1) is deemed to have come into operation on 1 April 2003.

**Repeal of Item 18 of Schedule 1 to Act 77 of 1968**

- 46.** (1) Item 18 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.  
(2) Subsection (1) is deemed to have come into operation on 1 April 2003.

**Amendment of section 33 of Act 90 of 1989, as amended by section 3 of Act 39 of 1997**

47. Section 33 of the South African Reserve Bank Act, 1989, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The provisions of subsection (1) shall not be construed as preventing any director, officer or employee of the Bank who is responsible for exercising any power or performing any duty under the Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency And Exchanges Act, 1933 (Act No. 9 of 1933), as amended, from disclosing to the Commissioner of the South African Revenue Service any information as may be required for purposes of exercising any power or performing any duty in terms of any Act administered by the Commissioner.”.

**Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001 and section 114 of Act 74 of 2002**

48. (1) Section 1 of the Value-Added Tax Act, 1991 is hereby amended—  
(a) by the substitution for paragraph (a) of the definition of “commercial accommodation” of the following paragraph:

“‘commercial accommodation’ means—

(a) lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, motel, hotel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat or similar establishment, which is regularly or systematically supplied and where the total annual receipts from the supply thereof exceeds [R48 000] R60 000 per annum or is reasonably expected to exceed [R48 000] R60 000 per annum,

but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;”.

**Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001, section 150 of Act 60 of 2001 and section 116 of Act 74 of 2002**

49. Section 6 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (2) of the following paragraph:

“(f) disclosing to the Governor of the Reserve Bank or any person acting under Governor’s direction and control such information as may be required for purposes of exercising any power or performance of any duty in connection with foreign transactions under the provisions of the Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency And Exchanges Act, 1933 (Act No. 9 of 1933), as amended.”.

**Amendment of section 2 of Act 38 of 1996, as amended by section 107 of Act 30 of 1998**

50. (1) Section 2 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution in the words preceding paragraph (a) for the expression “25 per cent” of the expression “18 per cent”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2003.

**Continuation of certain amendments of Schedules Nos. 1 to 6 and 10 to Act 91 of 1964**

**51.** (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, and 8 to the Customs and Excise Act, 1964, made under section 48, 49, 56 or 75(15) of that Act during the calendar year ending on 31 December 2002 shall not lapse by virtue of the provisions of section 48(6), 49, 56(3) or 75(16) of that Act.

(2) The amendment of Part 2 of Schedule No. 1 and Schedule No. 6 to the Customs and Excise Act, 1964, made respectively under sections 48 and 75 of that Act by Government Notices, in respect of the said Part 2 of Schedule No. 1 and Schedule No. 6 shall not lapse by virtue of the provisions of section 48(6) of that Act.

### **Short title and commencement**

**52.** (1) This Act shall be called the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003.

(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 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 2004.

## SCHEDULE 1

### RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 29 FEBRUARY 2004, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2004

(Section 29)

1. The rates of normal tax referred to in section 29 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 person in respect of which paragraph (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 R70 000	18 per cent of each R1 of the taxable income;
exceeds R70 000 but does not exceed R110 000	R12 600 plus 25 per cent of the amount by which the taxable income exceeds R70 000;
“ R110 000 “ “ “ “ R140 000	R22 600 plus 30 per cent of the amount by which the taxable income exceeds R110 000;
“ R140 000 “ “ “ “ R180 000	R31 600 plus 35 per cent of the amount by which the taxable income exceeds R140 000;
“ R180 000 “ “ “ “ R255 000	R45 600 plus 38 per cent of the amount by which the taxable income exceeds R180 000;
“ R255 000	R74 100 plus 40 per cent of the amount by which the taxable income exceeds R255 000.

- (b) in respect of the taxable income of any trust (other than a special trust), an amount of 40 cents on each rand of taxable income.

2. The rates of normal tax referred to in section 29 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 as defined in section 12E of the Income Tax Act, 1962, on each rand of the taxable income as does not exceed R150 000, 15 cents, and on each rand of the taxable income of such company as exceeds R150 000, 30 cents;
- (c) on each rand of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, 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 for the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

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

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 for the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 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 mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (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. 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 paragraph 2, 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

### AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE ACT, 1964

(Section 40)

Tariff item	Tariff heading	Description	Present rate of duty		Proposed rate of duty	
			Excise	Customs	Excise	Customs
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	34.7c/kg	34.7c/kg	34.7c/kg	34.7c/kg
104.10	22.03	Beer made from malt	2563c/l of absolute alcohol	2563c/l of absolute alcohol	2819.3c/l of absolute alcohol	2819.3c/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: such as mixtures of wine and water, etc.)				
.05		Sorghum beer (excluding beer made from preparations based on sorghum flour)	7.82c/l	7.82c/l	7.82c/l	7.82c/l
.10		Unfortified still wine	80.7c/l	80.7c/l	89.6c/l	89.6c/l
.40		Fortified still wine	182.5c/l	182.5c/l	200.75c/l	200.75c/l
.50		Other still fermented beverages, unfortified	130.5c/l	130.5c/l	143.55c/l	143.55c/l
.60		Other still fermented beverages, fortified	231.4c/l	231.4c/l	254.54c/l	254.54c/l
.70		Sparkling wine	227.6c/l	227.6c/l	252.6c/l	252.6c/l
.80		Other fermented beverages (excluding sorghum beer)	275.2c/l	275.2c/l	302.72c/l	302.72c/l
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength				
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:				
.10		Wine spirits, manufactured in the Republic by the distillation of wine	3 671c/l of absolute alcohol	-	4 038.1c/l of absolute alcohol	-
.15		Spirits, manufactured in the Republic by the distillation of any sugar cane product	3 671c/l of absolute alcohol	-	4 038.1c/l of absolute alcohol	-
.25		Spirits, manufactured in the Republic by the distillation of any grain product	3 671c/l of absolute alcohol	-	4 038.1c/l of absolute alcohol	-
.29		Other spirits, manufactured in the Republic	3 671c/l of absolute alcohol		4 038.1c/l 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		3 575c/l of absolute alcohol or 1 537c/l		3 942.1c/l of absolute alcohol or 1 695c/l

Tariff item	Tariff heading	Description	Present rate of duty		Proposed rate of duty	
			Excise	Customs	Excise	Customs
		compound alcoholic preparations of an alcoholic strength exceeding 1,713 per cent alcohol by volume		537c/l		1 695c/l
.70		Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances		3 575c/l of absolute alcohol		3 942.1c/l of absolute alcohol
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes				
.10		Cigars	76 670c/kg net	76 670c/kg net	106 600c/kg net	106 600c/kg net
.20		Cigarettes	175.40c/10 cigarettes	175.40c/10 cigarettes	194.25c/10 cigarettes	194.25c/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes, "homogenised" or "reconstituted" tobacco extracts and essences				
.10		Cigarette tobacco	10 297c/kg	10 297c/kg	12 447c/kg	12 447c/kg
.20		Pipe tobacco	5 251c/kg net	5 251c/kg net	5 824c/kg net	5 824c/kg net