

REPUBLIC OF SOUTH AFRICA

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 19 of 2001: Revenue Laws Amendment Act, 2001



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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.

(English text signed by the President.)
(Assented to 26 July 2001.)

ACT

To amend the Estate Duty Act, 1955, so as to further regulate the valuation of property for purposes of inclusion and deduction purposes; to amend the Income Tax Act, 1962, so as to fix the rates of normal tax payable by persons other than companies in respect of taxable incomes for the years of assessment ending on 28 February 2002 and 30 June 2002, and by companies in respect of taxable incomes for the years of assessment ending during the period of 12 months ending on 31 March 2002; to amend the definition of "gross income" so as to avoid a double inclusion of an amount therein; to regulate the tax treatment of pension funds where employees are transferred from a local authority to a municipal entity; to take capital gains into account in the formula used for determining the rate at which special remuneration or lump sum payments must be taxed; to increase the primary rebate for individuals; to further regulate the recoupment provisions in respect of any distribution of an asset to a shareholder; to amend the definition of "foreign dividend" to exclude certain amounts; to increase the amount of dividends and interest which are exempt from tax; to provide for the deduction of pre-production interest in respect of certain depreciable assets; to provide for a scrapping allowance in respect of certain depreciable assets; to provide for the deduction of an amount invested by a small business corporation in certain manufacturing assets; to provide for an allowance in respect of investments in certain aircraft hangars, aprons, runways and taxiways; to provide for an additional industrial investment allowance in respect of qualifying strategic industrial projects; to further regulate the deduction in respect of buildings used in a process of manufacturing; to regulate the treatment of certain income of non-resident trusts; to further regulate the taxation of long-term insurers; to further regulate the limitation on trading activities of a public benefit organisation; to further regulate electronic communication with the Commissioner; to provide for the payment of employees' tax by directors of private companies; to increase the provisional tax threshold; to further regulate the provisions relating to the taxation of capital gains; and to provide for certain consequential and textual amendments; to amend the Customs and Excise Act, 1964, so as to provide that requirements in respect of any report listing and describing cargo carried by or loaded on to any ship, aircraft, railway train or other vehicle and any outturn report to be submitted to the Controller may be prescribed by rule; to provide for the removal of goods in bond by a licensed remover; to provide for the removal of goods for export by a licensed remover; to reduce the period for which goods may be stored in a customs and excise warehouse from five years to two years; to make provision that the Commissioner may determine by rule the time when excisable

goods or fuel levy goods manufactured in the Republic shall be entered or deemed to be entered for home consumption and the payment of duty on such goods, restrict the licensing of customs and excise storage warehouses, cancel the licence of any existing storage warehouse and allow any imported goods to be mixed with locally produced excisable or fuel levy goods of the same class or kind in a customs and excise warehouse on payment of any difference of duty; to provide that goods so used shall be subject to the duties leviable and the manufacturing, accounting and removal procedures prescribed in terms of excisable or fuel levy goods manufactured in such warehouse; to provide further for provisions that regulate the removal of goods from a customs and excise warehouse; to provide that export bills of entry must be delivered before the goods are exported or at such times and in the circumstances provided by rule; to provide that imported goods may be delivered by the master, pilot or other carrier, container operator or depot operator to certain persons licensed or registered on compliance with such conditions or procedures as may be prescribed by rule and when liability for duty shall cease in respect of such goods; to insert a new section which provides for procedures relating to the registration of persons participating in activities regulated by the Act and the refusal of any application for registration and the suspension or cancellation of a registration and matters incidental thereto; to further regulate provisions relating to licensing; to provide for the activities for which a licence is required, the persons who are required to licence, the procedures and other requirements to be prescribed in the Notes, to the item in Schedule No. 8 in which such licence is specified and in the rules, and to specify the circumstances in which the Commissioner may refuse an application for a new licence or renewal of a licence or cancel or suspend a licence; to further provide for requirements in respect of the licensing of clearing agents; to provide for the licensing of a remover of goods in bond, the goods which are to be removed by such licensed remover, the application for such licence, the liability of the remover of goods in bond and other persons in respect of any goods removed or carried by the remover and matters incidental thereto; to confer accredited client status on any applicant who is licensed or registered under the Act; to prescribe the requirements in respect of such status and matters incidental thereto; to introduce an invoice price basis of valuation for excise duty purposes in respect of goods manufactured in the Republic and specified in certain items of Section B of Part 2 of Schedule No. 1; to provide for a refund of fuel levy on distillate fuel and the levy leviable on diesel in terms of the Road Accident Fund Act, 1996, and to provide for matters connected therewith; to further regulate certain provisions in respect of which deductions are allowed from the dutiable quantities and to limit such deductions to quantities not exceeding these specified in each case; to regulate electronic communication for the purposes of customs and excise procedures and to provide for matters connected therewith; to amend Schedule No. 1 to the said Act and the effective date thereof; and to provide for the continuation of amendments to the Schedules; to amend the Stamp Duties Act, 1968, so as to remove stamp duties on bills of exchange and promissory notes, bills of entry, securities and suretyships; to further regulate the stamp duties on debit entries; and to provide for certain consequential and textual amendments; to amend the Value-Added Tax Act, 1991, so as to further define certain expressions and to simplify and revise the provisions relating to the supply of accommodation; to enable the Commissioner to publish the name and registration numbers of vendors; to regulate the VAT consequences on the transfer of all assets and liabilities of a disestablished local authority to a new local authority so as to ensure that it will not constitute a supply subject to VAT when the consolidation of their accounting systems takes place; to regulate the exemption in respect of dwellings in the case of employers and local authorities who supply staff accommodation, to make it clear that any officer under the Commissioner's control, direction or supervision may be authorised to collect VAT on importation of goods; to make provision for a flat rate scheme in certain circumstances for small

scale farmers; to prevent claims for refunds of certain amounts of VAT after five years; to make it an offence not to issue a tax invoice to a recipient as required by the Act; and to make allowance for the addition of small quantities of minerals, vitamins and similar additives to increase the nutritional value of maize meal and milk; to amend the Road Accident Funds Act, 1996, so as to provide for a refund by the Road Accident Fund of certain levies leviable in terms of that Act; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for an exemption in respect of a change in beneficial ownership in securities which are interest bearing debentures listed by a financial exchange; to amend the Skills Development Levies Act, 1999, so as to regulate the period during which certain information must be submitted by the Commissioner to the Director General of Labour; and to further regulate the court's jurisdiction in respect of offences; to amend the Taxation Laws Amendment Act, 2000, so as to remove the requirement that the Commissioner must approve a benefit fund; to amend the Taxation Laws Amendment Act, 2001, so as to delete an amendment proposed in that Act; and to provide for matters connected therewith.

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

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1966, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991, section 9 of Act 97 of 1993 and section 8 of Act 53 of 1999

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

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

“The value of any property **[included in the estate of any person]** for the purposes of the inclusion thereof in the estate of any person in terms of section 3 or the deduction thereof in terms of section 4, determined as at the date of death of that person, shall be—”;
- (b) by the substitution in paragraph (f) of subsection (1) for the words preceding subparagraph (i) of the following words:

“in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property **[determined, subject to the provisions of section eight, by some impartial person appointed by the Commissioner]** exceeds the value of such interest, determined—”;
- (c) by the substitution in paragraph (f)*bis* of subsection (1) for the words preceding subparagraph (i) of the following words:

“in the case of shares in any company not quoted on any stock exchange, the value of such shares in the hands of the deceased at the date of his death **[as determined, subject to the provisions of section eight, by some impartial person appointed by the Commissioner]**, subject to the following provisions, namely—”;
- (d) by the substitution in paragraph (g) of subsection (1) for the words preceding the proviso of the following words:

“in the case of any other property, the fair market value of such property as at the date of death of the deceased person **[as determined, subject to the provisions of section eight, by sworn appraisement by some impartial person appointed by the Commissioner]**”; and
- (e) by the substitution in subsection (2) for the words preceding the second proviso of the following words and proviso:

“For the purposes of paragraphs (b) and (f) of subsection (1) and for purposes of determining the value of any deduction contemplated in section 4, the annual value of the right of enjoyment of a property means an amount equal to twelve per cent upon the fair market value **[determined, subject to the provisions of section eight, by sworn appraisal by some impartial person appointed by the Commissioner]** of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest: Provided that where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum **[(whether or not such sum is fixed for the purposes of the inclusion of such right as property in the estate of the deceased in terms of section 3 or the allowance thereof as a deduction in terms of section 4)]** as representing the annual yield as may **[seem to him to]** be reasonable, and the sum so fixed shall for the purposes of paragraphs (b) and (f) of subsection (1) be deemed to be the annual value of the right of enjoyment of such property:”.

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

2. 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 2002 or 30 June 2002; and
 - (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2002,
- 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 and section 5 of Act 5 of 2001

3. Section 1 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in paragraph (e) of the definition of “gross income” for the words preceding subparagraph (i) of the following words:

“any amount determined in accordance with the provisions of the Second Schedule **(other than any amount included under paragraph (eA))**, in respect of lump sum benefits received by or accrued to such person from or in consequence of his membership or past membership of—”;
- (b) by the substitution for paragraph (a) of the definition of “pension fund” of the following paragraph:

“(a) (i) any superannuation, pension, provident or dependants’ fund or pension scheme established by law **[or any such fund established for the benefit of employees of any local authority]; or**

- (ii) any superannuation, pension, provident or dependants' fund or pension scheme established for the benefit of the employees of any local authority; or
- (iii) any fund contemplated in subparagraph (ii) established on or before 14 November 2000, which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more local authorities exercise ownership control as contemplated by that Act, if such employees were employees of a local authority immediately prior to becoming employees of such municipal entity;"

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000 and section 6 of Act 5 of 2001

4. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Any decision of the Commissioner under the definitions of 'benefit fund', 'pension fund', 'provident fund', 'retirement annuity fund' and 'spouse' in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 9F, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 31, section 35(2), section 38(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of 'formula A' in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(7), 31(2), 65(1)(d) and 66(1)(c) of the Eighth Schedule, shall be subject to objection and appeal."

Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, section 5 of Act 90 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 76 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986, section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995 and section 7 of Act 5 of 2001

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

"(g) 'R' represents the greater of the amounts determined by applying the formula—

$$R = \frac{F}{B + D - (C + L + G)}$$

in respect of the said year and the preceding year of assessment, in which formula—

- (i) the amounts represented by the symbols ['A'], 'B', 'C', 'D' and 'L' shall be determined in accordance with the foregoing provisions of this subsection as applicable in the said year or in the said preceding year, as the case may be;
- (ii) 'F' represents the amount of normal tax (as determined before the deduction of any rebate) calculated at the full rate of tax chargeable for the said year or the said preceding year in respect of a taxable income equal to the amount represented by the expression 'B + D - (C + L + G)' in the formula for that year or preceding year, as the case may be; and

- (iii) 'G' represents an amount of the taxable capital gain included in the taxable income in terms of section 26A for the said year or the said preceding year, as the case may be:

Provided that[—

- (a)] where, as a result of the death or insolvency of the taxpayer, the period assessed is less than 12 months, the symbol 'R' shall be determined with reference to the said year only [and
(b) where the said preceding year ended on 28 February 1995, the symbols 'D' and 'L' in the formula shall be disregarded];”.

(2) Subsection (1) shall come into operation on 1 October 2001 and shall apply in respect of years of assessment ending on or after that date.

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 and section 15 of Act 30 of 2000

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

- (a) by the substitution in paragraph (a) of subsection (2) for the expression “R3 800” of the expression “R4 140”; and
(b) by the substitution in paragraph (b) of subsection (2) for the expression “R2 900” of the expression “R3 000”.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000 and section 6 of Act 59 of 2000

7. Section 8 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (i) of paragraph (e) of subsection (4) of the following subparagraph:
“(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 12E or section 12G 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”;
(b) by the addition of the word “or” to subparagraph (iv) of paragraph (e) of subsection (4);
(c) by the addition to paragraph (e) of subsection (4) of the following subparagraph:
“(v) in respect of any aircraft hangar, apron, runway or taxiway as contemplated in section 12F.”;
(d) by the substitution for item (aa) of paragraph (e) of subsection (4) of the following item:
“(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, plant, ship,

- aircraft, pipeline, transmission line or cable, [or] railway line, aircraft hangar, apron, runway or taxiway (hereinafter referred to as the 'further asset') to replace the aforesaid machinery, plant, ship, aircraft, pipeline, transmission line or cable, [or] railway line, aircraft hangar, apron, runway or taxiway; and";
- (e) by the addition of the word "or" at the end of sub-item (D) of item (bb) of paragraph (e) of subsection (4);
- (f) by the addition to item (bb) of paragraph (e) of subsection (4) of the following sub-item:
- "(E) in the case of an aircraft hangar, apron, runway or taxiway in carrying on his sole business of airport operator as contemplated in section 12F";
- (g) by the substitution for paragraph (k) of subsection (4) of the following paragraph:
- "(k) For the purposes of paragraph (a), where during any year of assessment any person has—
- (i) donated; or
- (ii) [distributed by way of a dividend] transferred in whatever manner or form to any shareholder of that company,
- any asset in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph, such person shall be deemed to have recovered or recouped an amount equal to the market value of such asset as at the date of such donation or [distribution] transfer."; and
- (h) by the insertion after paragraph (m) of subsection (4) of the following paragraph:
- "(n) Where a taxpayer disposes of an industrial asset contemplated in section 12G before completion of the write off period of that asset for purposes of section 11(e), 12C or 13, as applicable, there shall be included in the taxpayer's income, all amounts allowed to be deducted in respect of that industrial asset under section 12G, whether in the current year or any previous year of assessment, which have been recovered or recouped during the current year of assessment, in addition to the inclusion of those amounts in terms of paragraph (a)."

Amendment of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000 and amended by section 11 of Act 59 of 2000 and section 10 of Act 5 of 2001

8. (1) Section 9E of the Income Tax Act, 1962, is hereby amended by the substitution in paragraph (a) of the definition of "foreign dividend" in subsection (1) for the words preceding the proviso of the following words:

"any amount deemed to have been distributed as contemplated in section 64C(3)(a), (b), (c) or (d) by any company which is a controlled foreign entity 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 which have not been subject to tax in the Republic, and none of the provisions contained in section 64C(4) (other than section 64C(4)(g) and (h)) apply."

(2) Subsection (1) shall come into operation on the date of promulgation of this Act.

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 and section 13 of Act 59 of 2000

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

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

“(ii) pension received by or accrued to any resident from a source outside the Republic, which is not deemed to be from a source in the Republic in terms of section 9(1)(g), in consideration of past employment outside the Republic;”;

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(b) by the substitution in item (aa) of subparagraph (xv) of paragraph (i) of subsection (1) for the expression “R4 000” of the expression “R5 000”; and

(c) by the substitution in item (bb) of subparagraph (xv) of paragraph (i) of subsection (1) for the expression “R3 000” of the expression “R4 000”.

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Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000 and section 15 of Act 59 of 2000

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

(a) by the substitution for paragraph (bA) of the following paragraph:

“(bA) any interest (including related finance charges) which is not otherwise allowable as a deduction under this Act, which has been actually incurred by the taxpayer on any loan, advance or credit utilized by him for the acquisition, installation, erection or construction of any machinery, plant, [or] building, or any improvements to a building, or any pipeline, transmission line or cable or railway line as contemplated in section 12D, or any aircraft hangar, apron, runway or taxiway as contemplated in section 12F, to be used by him for the purposes of his trade, and which has been so incurred in respect of a period prior to such machinery, plant, building, [or] improvements, pipeline, transmission line or cable, railway line, aircraft hangar, apron, runway or taxiway, being brought into use for the purposes of the taxpayer’s trade, such deduction to be allowed in the year of assessment during which such machinery, plant, building, [or] improvements, pipeline, transmission line or cable, railway line, aircraft hangar, apron, runway or taxiway is or are brought into use for the said purposes;”;

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(b) by the substitution for subparagraph (vii) of paragraph (o) of the following subparagraph:

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“[(vii)] (vi) any transmission line or cable or railway line referred to in section 12D; or”;

(c) by the addition to paragraph (o) of the following subparagraph:

“(vii) any aircraft hangar or any apron, runway or taxiway referred to in section 12F.”;

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- (d) by the substitution for the words following subparagraph (vi) of paragraph (o) but preceding the proviso of the following words:
- “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), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable, [or] railway line, aircraft hangar, apron, runway or taxiway over the total amount arrived at by adding—
- (aa) 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 12F, or section 13(1), or section 13(1) as applied by section 13(4) or (8), or section 13bis (1), (2) or (3), or section 13ter(2) or (3), or section 14(1)(a) or (b), or the corresponding provisions of any previous Income Tax Act, or section 14bis(1)(a), (b) or (c), or section 24F, or section 24G, or section 27(2)(b) [or (d)]; or
- (bb) in the case of any building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable, [or] railway line, aircraft hangar, apron, runway or taxiway which was during any previous financial year or years used by the taxpayer in the course of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, all the allowances which could have been made in terms of the provisions referred to in item (aa) as if such receipts and accruals had been included in such taxpayer's income, 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, articles, transmission line or cable, [or] railway line, aircraft hangar, apron, runway or taxiway.”;
- (e) by the substitution for paragraphs (i) and (ii) of the proviso to paragraph (o) of the following paragraphs:
- “(i) no allowance shall be made in the case of any such building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, transmission line or cable, [or] railway line, aircraft hangar, apron, runway or taxiway 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 13ter(7)(a), whether in the current or in any previous year of assessment;
- (ii) for the purposes of this paragraph the cost of any building (or portion thereof), improvements (or portion thereof) to any building, shipbuilding structure, improvements to any shipbuilding structure, residential unit, transmission line or cable, [or] railway line, aircraft hangar, apron, runway or taxiway shall be deemed to be that portion of the actual cost on which the allowance in question was made;”.
- (2)(a) Subsection (1)(a) shall—
- (i) in so far as it adds the reference to any pipeline, transmission line or cable or railway line contemplated in section 12D, be deemed to have come into operation on 23 February 2000; and

- (ii) in so far as it adds the reference to any aircraft hangar, apron, runway or taxiway contemplated in section 12F, be deemed to have come into operation on 1 April 2001;

(b) Subsection (1)(b) shall in so far as it changes the paragraph number, be deemed to have come into operation on 23 February 2000, and insofar it adds the word "or" shall be deemed to have come into operation on 1 April 2001.

(c) Subsection (1)(c), (d) and (e) shall be deemed to have come into operation on 1 April 2001.

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995 and section 18 of Act 59 of 2000

11. (1) Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b) or section 12E) which was or is brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or"

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001.

Insertion of sections 12E, 12F and 12G in Act 58 of 1962

12. The following sections are hereby inserted in the Income Tax Act, 1962, after section 12D:

"Deduction in respect of certain plant and machinery of small business corporations

12E. (1) Where any plant or machinery (hereinafter referred to as an asset) of a taxpayer which qualifies as a small business corporation—

(a) is brought into use for the first time by that taxpayer on or after 1 April 2001 for the purpose of that taxpayer's trade (other than mining or farming); and

(b) is used by that taxpayer directly in a process of manufacture (or any other process which in the opinion of the Commissioner is of a similar nature) carried on by that taxpayer,

a deduction equal to the cost of such asset shall be allowed in the year that such asset is so brought into use.

(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost 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 or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)(c), whether in the current or any previous year of assessment.

(3) Any expenditure (other than expenditure referred to in section 11(a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this section from one location to another shall be allowed to be deducted from that taxpayer's income in that year.

(4) For the purposes of this section—

- (a) 'small business corporation' means any close corporation or any company registered 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—
- (i) the gross income for the year of assessment does not exceed R1 million: Provided that where the close corporation or company during the relevant year of assessment carries on any trade, for purposes of which any asset contemplated in this section is used, for a period which is less than 12 months, the amount of R1 million shall be reduced to an amount which bears to R1 million, 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), during which that company or close corporation carried on that trade bears to 12 months;
 - (ii) 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 (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);
 - (iii) 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; and
 - (iv) such company is not an employment company;
- (b) 'employment company' means any company—
- (i) which is a labour broker as defined in the Fourth Schedule to the 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
 - (ii) which is a personal service company as defined in the Fourth Schedule;
- (c) 'investment income' means—
- (i) any income in the form of dividends, royalties, rental, annuities or income of a similar nature;
 - (ii) any interest as contemplated in section 24J, any amount contemplated in section 24K and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and
 - (iii) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;
- (d) '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.

Deduction in respect of certain aircraft hangars, aprons, runways and taxiways

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

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'affected asset' means any new and unused aircraft hangar, apron, runway or taxiway on any designated airport, contracted for on or after the effective date, and the construction, erection or installation of which commenced on or after such date, and includes any earthworks or supporting structures forming part of such hangar, apron, runway or taxiway;

'designated airport' means an airport approved by the Minister, in consultation with the Minister of Transport, as a designated airport by notice in the *Gazette* for purposes of this section; and

'effective date' means 1 April 2001.

(2) In respect of any affected asset which—

(a) is brought into use for the first time by such taxpayer on or after the effective date; and

(b) is used directly by such taxpayer in carrying on his sole business as airport operator,

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

(3) The allowance contemplated in subsection (2) in respect of an affected asset shall, in respect of any one year of assessment, be five per cent of the cost incurred in respect of that asset.

(4) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer or the cost 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 or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment.

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

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

Additional industrial investment allowance in respect of industrial assets used for qualifying strategic industrial projects

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

'cost of an industrial asset' means the direct expenditure actually incurred by a company to acquire, erect, construct or install an industrial asset, excluding—

(a) so much of the expenditure—

(i) as exceeds the fair market value of that asset; or

(ii) paid to any connected person in relation to that company, as exceeds the lesser of—

(aa) the fair market value of that asset; or

(bb) the costs incurred by that connected person (or any other connected person in relation to the company) in respect of that asset;

(b) any borrowing or finance costs, including interest as contemplated in section 24J or raising fees; and

(c) any amount of the expenditure which is or was directly or indirectly received in the form of any subsidy, rebate, refund or other assistance

granted by the national sphere of government pursuant to any investment incentive;

'industrial asset' means—

- (a) any plant or machinery acquired or contracted for by a company after the date of approval in terms of subsection (5), which—
 - (i) has not been used before by any person;
 - (ii) will be brought into use for the first time by that company within three years from the date of approval in terms of subsection (5);
 - (iii) will be used by that company in the Republic for purposes of carrying on an industrial project of that company; and
 - (iv) will qualify for a deduction in terms of section 11(e) or 12C(1)(a); or
- (b) any building or any improvements effected to a building situated in the Republic, acquired or contracted for by a company after the date of approval in terms of subsection (5), where such building or such improvements—
 - (i) have not been used before by any person;
 - (ii) will be brought into use by that company within three years from the date of approval in terms of subsection (5);
 - (iii) will be wholly or mainly used for the purposes of carrying on therein any process requiring plant and machinery contemplated in paragraph (a); and
 - (iv) will qualify for a deduction in terms of section 13(1)(b), (dA) or (f), other than where the company would qualify for such deduction as a lessor;

'industrial project' means—

- (a) any manufacturing of products, goods, articles, or other things (excluding any tobacco and tobacco related products) within the Republic that is classified under 'Major Division 3: Manufacturing' in the most recent Standard Industrial Classification issued by Statistics South Africa;
- (b) any computer and computer related activities; or
- (c) any research and development activities.

(2) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (3), deduct an amount (hereinafter referred to as an additional industrial investment allowance) equal to—

- (a) 100 per cent of the cost of any industrial asset used in a qualifying strategic industrial project determined to have preferred status; and
- (b) 50 per cent of the cost of any industrial asset used in any other qualifying strategic industrial project,

in the year of assessment during which that asset is first brought into use by the company as owner thereof for such project carried on by that company.

(3) The additional industrial investment allowance contemplated in subsection (2)—

- (a) will be allowed only against income received by or accrued to the company from carrying on any industrial project: Provided that the amount whereby such allowance exceeds such income, shall be carried forward to the immediately succeeding year of assessment and be deemed to be a deduction or allowance which may be allowed in terms of subsection (2) in that succeeding year; and
- (b) may not exceed the lesser of the amount reflected in the application for approval as being the cost of the industrial assets to be acquired by the company, as contemplated in subsection (4)(a), or—
 - (i) R600 million in the case of any qualifying strategic industrial project with preferred status; or

(ii) R300 million in the case of any other qualifying strategic industrial project.

(4) An industrial project of a company constitutes a strategic industrial project where, the Minister of Trade and Industry, after taking into account the recommendations of the adjudication committee, is satisfied that—

- (a) the cost of all industrial assets to be acquired by the company, which will be brought into use for that industrial project within three years after the date of approval in terms of subsection (5), will exceed R50 million;
- (b) the industrial project will increase production of the relevant industrial sector within the Republic, after taking into account the displacement of any other activities within that sector;
- (c) in the case of an industrial project that represents an expansion of an existing industrial project, the expansion will significantly increase production in respect of that existing project;
- (d) the company will not receive any concurrent benefit in terms of section 37E or section 37H of this Act;
- (e) the industrial project will not constitute an industrial participation project as contemplated in subsection (7)(e) and will not receive any concurrent investment incentive provided by any national sphere of government;
- (f) the industrial project will have long-term commercial viability after the deduction provided by this section has been allowed and has been set off against the income of that company;
- (g) the company and any person which is a connected person in relation to that company in terms of—
 - (i) paragraph (d)(i), (ii) or (iii) of the definition of 'connected person' in section 1; or
 - (ii) paragraph (d)(iv) or (v) of that definition, taking into account only holdings of 50 per cent or more,
 are taxpayers in good standing and must in this regard submit—
 - (aa) a declaration of good standing stating that all their tax affairs are in order and that they have complied with all the relevant provisions of the laws administered by the Commissioner; and
 - (bb) a certificate obtained from the Commissioner confirming that the company and all connected persons are registered for tax purposes, that all returns required to be rendered by that company and connected persons in terms of this Act, or any other Act administered by the Commissioner, have been timeously rendered and that any tax, duties or levies due to the Commissioner have been paid, or that arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or the payment of any outstanding taxes, duties or levies: Provided that where the company submits a request to the Commissioner for a certificate and the Commissioner fails to respond within 60 days, the company shall, in the absence of any proof to the contrary, be deemed to have complied with the provisions of this subparagraph; and
- (h) the application for approval of the project by the company is received by the Minister of Trade and Industry after 31 July 2001, but not later than 31 July 2005, in such form and containing such information as the Minister of Trade and Industry may prescribe.

(5) The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve a strategic industrial project as a qualifying strategic industrial project, either with or without preferred status, where that Minister is satisfied that the strategic

industrial project will significantly increase growth or employment within the Republic having regard to—

- (a) the extent to which the strategic industrial project will upgrade an industry within the Republic by—
 - (i) utilising processes or supplying products that are new to the Republic; 5
 - (ii) acting as a key component to related existing industrial projects within the Republic so as to improve their competitiveness as a whole; or
 - (iii) engaging in any value-added process; 10
 - (b) the extent to which the strategic industrial project will provide general business linkages within the Republic by—
 - (i) acquiring goods or services from small, medium and micro enterprises; or
 - (ii) adding to the physical infrastructure of the Republic that will be available to the general public; and 15
 - (c) the extent to which the strategic industrial project will create either direct or indirect employment within the Republic.
- (6) Notwithstanding subsection (5), the Minister of Trade and Industry may not approve any project where the potential additional industrial investment allowances in respect of that project and all other approved qualifying strategic industrial projects (other than those projects where the approval thereof has been withdrawn under subsection (9)), will in the aggregate exceed R10 billion. 20
- (7) The Minister of Finance, in consultation with the Minister of Trade and Industry, must make regulations— 25
- (a) prescribing the types of projects that will constitute computer activities, computer related activities and research and development for purposes of paragraphs (b) and (c) of the definition of 'industrial project' in subsection (1); 30
 - (b) prescribing the criteria for determining the extent of the increase of production of an industrial sector required and the extent of the displacement of other activities to be taken into account for purposes of subsection (4)(b);
 - (c) prescribing the criteria for purposes of determining whether there is an increase in production in respect of an existing industrial project and the extent of the increase required for purposes of subsection (4)(c); 35
 - (d) prescribing to what extent a company may have benefited from section 37E or section 37H of this Act for purposes of subsection (4)(d);
 - (e) prescribing what constitutes an industrial participation project for the purposes of subsection (4)(e); 40
 - (f) prescribing the factors to be taken into account in determining whether the industrial project will have long-term commercial viability for the purposes of subsection (4)(f);
 - (g) prescribing what factors need to be taken into account for purposes of subsection (5)(a) in determining whether— 45
 - (i) a process or product will be new to the Republic;
 - (ii) a company will be acting as a key component to related existing industrial projects within the Republic; or
 - (iii) a process will constitute a value-added process; 50
 - (h) prescribing what factors need to be taken into account for purposes of subsection (5)(b) in determining whether—
 - (i) goods or services will be acquired from small, medium and micro enterprises; or
 - (ii) the project will add to the physical infrastructure of the Republic; and 55
 - (i) prescribing the extent to which the strategic industrial project must create either direct or indirect employment within the Republic for purposes of subsection (5)(c).
- (8) Within six months after the close of each year of assessment (or such longer period as the Minister of Trade and Industry may allow) starting with 60

the year in which approval is granted in terms of subsection (5), a company with a qualifying strategic industrial project must annually report to that Minister with respect to the progress of the project in terms of the requirements of subsections (4) and (5) in such form and in such manner as that Minister may prescribe.

(9) Where—

(a) in respect of any company carrying on a qualifying strategic industrial project, any material fact changes during any year of assessment or the company during any year fails to comply with any requirement contemplated in subsection (4) or (5), which would have had the effect that approval in terms of subsection (5) would not have been granted had such change in fact or such failure been known to the Minister of Trade and Industry at the time of granting approval; or

(b) any company carrying on a qualifying strategic industrial project during any year of assessments fails to submit a report to the Minister of Trade and Industry, as required in terms of subsection (8); or

(c) the approval granted in terms of this section to a company carrying on a qualifying strategic industrial project, was based on any fraudulent information, material misrepresentation or material omission,

the Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that project with immediate effect and direct that the Commissioner must disallow all additional industrial investment allowances (including any additional industrial investment allowance allowed during that year or any previous year of assessment) in respect of any asset used in that project: Provided that where the change in material facts or failure to meet any requirement, as contemplated in paragraph (a), takes place as a result of any event which is outside the control of the company, that Minister may, taking into account the circumstances of that event,—

(i) disregard that change in material facts; or

(ii) withdraw the approval granted in terms of this section with immediate effect and may direct that the Commissioner must disallow any additional industrial investment allowance in respect of that year of assessment or any subsequent year of assessment.

(10) The Commissioner must—

(a) promptly notify the Minister of Trade and Industry whenever the Commissioner discovers information that may cause a full or part withdrawal of deductions in terms of subsection (9);

(b) disallow all deductions otherwise provided under this section starting with the date of approval in terms of subsection (5) where the company has provided any fraudulent information, material misrepresentation or material omission with respect to any tax, duty or levy administered by the Commissioner and must notify the Minister of Trade and Industry accordingly; and

(c) inform the Minister of Trade and Industry where any company has requested the Commissioner to issue a certificate contemplated in subsection (4)(g)(bb) and that certificate was denied.

(11) For purposes of subsections (9) and (10), the Commissioner may, notwithstanding the provisions of sections 79, 81(5) and 83(18), raise an additional assessment for any year of assessment where an additional industrial investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (9) or (10).

(12) Where the approval of a project has been withdrawn as contemplated in subsection (9), a company shall in addition to any normal tax, be liable for an amount of additional tax not exceeding twice the difference

between the tax as calculated in respect of its taxable income returned by it and the tax properly chargeable in respect of its taxable income as determined after disallowing the additional industrial investment allowance provided by this section.

(13) There shall for the purposes of this section be an adjudication committee which must consist of at least—

(a) three persons employed by the Department of Trade and Industry, appointed by the Minister of Trade and Industry; and

(b) three persons employed by either the National Treasury or the South African Revenue Service, appointed by the Minister of Finance:

Provided that the Minister of Trade and Industry or the Minister of Finance, as the case may be, may appoint alternative persons so employed if any person appointed in terms of paragraph (a) of (b) is not available to perform any function as a member of the committee.

(14) The adjudication committee contemplated in subsection (13) is an independent committee which performs its functions impartially and without fear, favour or prejudice and for the purpose of this section, the committee may—

(a) evaluate any application and make recommendations to the Minister of Trade and Industry for purposes of the approval of any strategic industrial project in terms of subsection (5);

(b) investigate or cause to be investigated any project for the purposes of this section;

(c) monitor all qualifying strategic industrial projects—

(i) to determine whether the objectives of this section are being achieved; and

(ii) to advise the Minister of Finance and the Minister of Trade and Industry on any future proposed amendment or adjustment thereof;

(d) require any company applying for approval of any project as a qualifying strategic industrial project in terms of this section, to furnish such information or documents as are necessary for the committee and Minister of Trade and Industry to perform their functions in terms of this section;

(e) for a specific purpose and on such conditions and for such period as it may determine obtain the assistance of any person to advise the committee relating to any function assigned to the committee in terms of this section; and

(f) appoint its own chairperson and determine the procedures for its meetings provided that all procedures must be properly recorded and minuted.

(15) The adjudication committee and any person whose assistance has been obtained by that committee may not—

(a) act in any way that is inconsistent with the provisions of subsection (14) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or

(b) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

(16) The Minister of Trade and Industry—

(a) may, after taking into account the recommendations of the adjudication committee, extend the three year period contemplated in the definition of 'industrial asset' in subsection (1) by a period not exceeding one year, where an industrial project consists of industrial assets exceeding R1 billion;

(b) must provide written reasons for any decision to grant or deny any application for approval of a strategic industrial project as a qualifying strategic industrial project in terms of subsection (5), or any withdrawal of approval as contemplated in subsection (9);

(c) must inform the Commissioner of the approval of any project in terms of subsection (5) as a qualifying strategic industrial project, setting out

- such particulars required by the Commissioner to determine the amount of the additional industrial investment allowance allowable in terms of this section;
- (d) must publish the particulars of any application received from a company for approval of a qualifying strategic industrial project in the *Gazette* not later than 30 days after providing to that company the written reasons for any decision as contemplated in paragraph (b);
 - (e) must submit an annual report to Parliament, and must provide a copy of that report to the Auditor-General, setting out the following information in respect of each company that received approval in terms of subsection (5)—
 - (i) the name of each company;
 - (ii) the description of each project;
 - (iii) the potential national revenue forgone by virtue of the deductions allowable in respect of that project in terms of this section;
 - (iv) the annual progress relating to the direct benefits of the project in terms of economic growth or employment, setting out the details of the factors contemplated in subsections (4) and (5) on which approval for the strategic industrial project was granted;
 - (v) any decision to withdraw the approval of a project in terms of subsection (9); and
 - (vi) any decisions not to withdraw the approval of a project, despite any material change in facts, as contemplated in paragraph (i) of the proviso to subsection (9).
- (17) The Commissioner must submit an annual report to the Auditor-General containing a list of all—
- (a) certificates issued under subsection (4)(g); and
 - (b) failures to respond within 60 days as provided in subsection (4)(g).
- (18) Notwithstanding the provisions of section 4, the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on a qualifying strategic industrial project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform its functions in terms of this section.
- (19) Every employee of the Department of Trade and Industry and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and may not communicate any such matter to any person whatsoever other than to the company concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.
- (20) Any person who contravenes the provisions of subsections (15) and (19), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.

Amendment of section 13 of Act 58 of 1962

13. Section 13 of the Income Tax Act, 1962, is hereby amended by the insertion after paragraph (d) of subsection (1) of the following paragraph:

- “(dA) any building that has never been used, if such building has been acquired by the taxpayer by purchase from any other person and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture or any other process which in the

opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or”.

Amendment of section 25B of Act 58 of 1962, as inserted by section 27 of Act 129 of 1991 and amended by section 22 of Act 141 of 1992, section 36 of Act 30 of 1998 and section 32 of Act 59 of 2000

14. (1) Section 25B of the Income Tax Act, 1962, is hereby amended—

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

“(1) Any income received by or accrued to or in favour of any person during any year of assessment in his capacity as the trustee of a trust [referred to in the definition of ‘person’ in section 1], shall, subject to the provisions of section 7, to the extent to which such income has been derived for the immediate or future benefit of any ascertained beneficiary [with] who has a vested right to such income during such year, be deemed to be income which has accrued to such beneficiary, and to the extent to which such income is not so derived, be deemed to be income which has accrued to such trust.”;

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

“(a) such capital arose from—

(i) income received by or accrued to such trust; or

(ii) any receipts and accruals of such trust which would have constituted income if such trust had been a resident,

in any previous year of assessment during which such resident had a contingent right to such income or receipts and accruals; and

(b) such income [has] or receipts and accruals have not been subject to tax in the Republic in terms of the provisions of this Act.”; and

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

“(3) Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any income referred to in subsection (1) [(but excluding any income contemplated in subsection (2))], shall, to the extent to which such income is under the provisions of that subsection deemed to be income which has accrued to a beneficiary or to the trust, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by such beneficiary or trust, as the case may be.”.

(2) Subsection (1)(b) and (c) shall be deemed to have come into operation on 1 January 2001.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000 and section 15 of Act 5 of 2001

15. (1) Section 29A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11A) of the following subsection:

“(11A) For the purposes of subsection (11), the percentage of the amount of expenses, [and] allowances and transfers contemplated in subsection (11)(a)(ii)(aa) and (bb) and subsection (11)(a)(iii) to be allowed in respect of the first five years of assessment commencing on or after 1 January 2002, shall be reduced by an amount determined in accordance with the provisions of subsection (11B) and (11C).”.

(2) Subsection (1) shall apply in respect of years of assessment commencing on or after 1 January 2002.

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000

16. (1) Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in item (aa) of subparagraph (iv) of paragraph (b) of subsection (3) for the words preceding sub-item (A) of the following words:

“the gross income derived from all such business **[undertaking]** ~~undertakings~~ or trading **[activity does]** ~~activities do not in total~~ exceed the greater of—”.

(2) Subsection (1) shall come into operation on the date that section 30 of the Income Tax Act, 1962, comes into operation.

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, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000 and section 19 of Act 5 of 2001

17. Section 66 of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (7B) of the following subsections:

“(7C) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a taxpayer affixed to any return as contemplated in subsection (7A), was used with or without the consent and authority of that taxpayer, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was so used with the consent and authority of that taxpayer.

(7D)(a) Notwithstanding anything contained to the contrary in this Act or in any other law, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of any agreement (entered into in accordance with any regulations made by the Minister in terms of subsection (7B)) establish the basis upon which any court of competent jurisdiction shall determine such issues.

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence—

- (i) on the sole grounds that it is an electronic data message; or
- (ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(c)(i) Information in the form of a data message shall be given due evidential weight.

(ii) In assessing the evidential weight of a data message a court shall have regard to—

- (aa) the reliability of the manner in which the data message was generated, stored and communicated;
- (bb) the reliability of the manner in which the integrity of the information was maintained;
- (cc) the manner in which its originator was identified;
- (dd) whether these functions were in compliance with the agreement contemplated in paragraph (a); and
- (ee) the requirements of this section, and any other relevant factor.

(7E) Any person who uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years.”.

Amendment of section 75 of Act 58 of 1962

18. Section 75 of the Income Tax Act, 1962, is hereby amended—

- (a) by the addition of the word “or” at the end of paragraph (h) of subsection (1); and
- (b) by the insertion after paragraph (h) of subsection (1) of the following paragraph: 5
“(i) obtains approval of any project as a qualifying strategic industrial project in terms of section 12G of the Act, where such approval was based on any fraudulent information provided or material misrepresentation made by that person.”. 10

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

19. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 20

- (a) by the deletion of the word “and” at the end of paragraph (e) of the definition of “employee”;
 - (b) by the addition of the word “and” at the end of paragraph (f) of the definition of “employee”; 25
 - (c) by the addition to the definition of “employee” of the following paragraph: “(g) any director of a private company who is not otherwise included in terms of paragraph (a);”;
 - (d) by the insertion after the definition of “labour broker” of the following definition: 30
“‘month’ means any of the twelve portions into which any calendar year is divided;”;
 - (e) by the deletion of item (vii) of the definition of “remuneration”.
- (2) Subsection (1) shall come into operation on 1 March 2002.

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, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000 and section 54 of Act 59 of 2000 35 40

20. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (3).

(2) Subsection (1) shall come into operation on 1 March 2002.

Amendment of Paragraph 9 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1997 and section 55 of Act 59 of 2000 45

21. (1) Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 50

- (a) by the substitution for subparagraph (1) of the following subparagraph: 55
“(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement or as varied by the Minister under section 5(3) of this Act, to the rebates applicable in terms of section 6 and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to such classes of

employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of [subparagraph] subparagraphs (3), (4) and (5) of this paragraph and paragraphs 10, 11 and 12, be determined in accordance with such tables or where subparagraph (3), (4) or (5) is applicable, in accordance with that subparagraph."'; and

(b) by the addition of the following subparagraph:

"(5) The amount to be deducted or withheld in respect of employees' tax from any amount paid or payable to any director of any private company during any year of assessment of that director, in respect of services rendered or to be rendered by that director to that company, shall be determined after taking into account any amount of employees' tax paid or payable to the Commissioner by that company during that year of assessment, in respect of that director in terms of paragraph 11C(2)."

(2) Subsection (1) shall come into operation on 1 March 2002.

Insertion of paragraph 11C in Fourth Schedule to Act 58 of 1962

22. (1) The following paragraph is hereby inserted after paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962:

"Employees' tax payable in respect of directors of private companies

11C. (1) Every director of a private company shall, for purposes of this paragraph, be deemed to have received from that private company during any month, an amount of remuneration determined in accordance with the formula—

$$Y = \frac{T}{N},$$

in which formula—

- (a) 'Y' represents the amount to be determined;
- (b) 'T' represents the balance of remuneration determined in terms of paragraph 2(4) (excluding any amount which was deemed to be remuneration in terms of this paragraph), paid or payable to that director by that company in respect of the last year of assessment of that director which ended before that month, less any amount—
 - (i) contemplated in paragraph (d), (e) or (f) of the definition of 'gross income' which is included therein; or
 - (ii) which is included therein in terms of paragraph 11A; and
- (c) 'N' represents the number of completed months which that director was employed by that company during that last year of assessment;

Provided that—

- (i) the balance of remuneration determined in respect of the last year of assessment of a director which ended on or before 28 February 2002, shall, for the purposes of paragraph (b), be determined on an amount which would, but for the provisions of paragraph (vii) of the definition of 'remuneration', have constituted remuneration under that definition;
- (ii) where the remuneration paid or payable to that director in respect of—
 - (aa) the last year of assessment, contemplated in paragraph (b), has not yet been determined—
 - (A) 'T' shall be determined based on the balance of remuneration paid or payable to that director in respect of the year of assessment preceding that last year of assessment, increased by an amount equal to 20 per cent (or such other percentage as the Minister may from time to time

determine by notice in the *Gazette*) of that remuneration; and

(B) 'N' shall represent the number of completed months which that director was employed by that company during that preceding year of assessment; or

(bb) the preceding year of assessment, contemplated in sub-item (aa), has not yet been determined, the company must request the Commissioner to determine the amount of remuneration which is deemed to have been received for the purpose of this subparagraph.

(2) Every private company shall on a monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3), which shall for the purposes of sections 79, 89bis, 89ter, 89quat, 90, 102 and 102A of the Act and paragraphs 1, 4, 6, 12, 13 and 14 and Parts III and IV of this Schedule, be deemed to be an amount of employees' tax which was required to be deducted or withheld by the company as an employer in terms of paragraph 2 of this Schedule.

(3) The amount of employees' tax to be paid by the private company to the Commissioner in terms of subparagraph (2) in respect of any director shall be determined in accordance with paragraph 9, 10 or 11 in respect of an amount of remuneration deemed to have been received by that director as contemplated in subparagraph (1).

(4) A company shall have a right of recovery against a director in respect of any amount paid by that company in terms of subparagraph (1), in respect of that director and that amount may be deducted from future remuneration which may become payable by that company to that director.

(5) Until such time as a director pays to the company the amount which is due to the company in terms of subparagraph (4), such director shall not be entitled to receive from the company an employees' tax certificate in respect of that amount."

(2) Subsection (1) shall come into operation on 1 March 2002.

Amendment of paragraph 13 of Fourth Schedule to Act 58 of 1962, as amended by section 24 of Act 72 of 1963, section 29 of Act 113 of 1977 and section 49 of Act 101 of 1990

23. (1) Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Subject to the provisions of paragraphs 5, 11C(5) and 28, every employer who during any period contemplated in subparagraph (1A) deducts or withholds any amount by way of employees tax as required by paragraph 2 shall within the time allowed by subparagraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such employer, an employees tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees tax included in any other employees tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10)."

(2) Subsection (1) shall come into operation on 1 March 2002.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 85 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 23 of Act 70 of 1989, section 50 of Act 113 of 1993 and section 37 of Act 36 of 1996

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24. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in item (a) of subparagraph (1) for the expression “R1 000” of the expression “R2 000”; and
- (b) by the substitution in sub-item (i) of item (d) of subparagraph (1) for the expression “R50 000” of the expression “R80 000”.

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Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

25. (1) Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

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- “(2) For the purposes of subparagraph (1)(b)(i), an interest in immovable property situated in the Republic includes a direct or indirect interest of at least 20 per cent held by a person (alone or together with any connected person in relation to that person) in the equity share capital of a company or in any other entity, where 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is, at the time of disposal of shares in that company or interest in that other entity, attributable directly or indirectly to immovable property situated in the Republic.”.

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(2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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26. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for sub-items (viii) and (ix) of item (c) of subparagraph (1) of the following sub-items:
 - “(viii) despite section 23(d), if that person acquired that asset by way of a donation and the donations tax levied in respect of that donation was paid by that person, so much of the donations tax which bears to the full amount of the donations tax so payable the same ratio as the capital gain of the donor determined in respect of that donation, bears to the market value of that asset on the date of that donation; and
 - (ix) if that asset was acquired or disposed of by the exercise of an option (other than the exercise of an option contemplated in item (f)), the expenditure actually incurred in respect of the acquisition of the option;”;
- (b) by the substitution in item (g) of subparagraph (1) for the words preceding sub-item (i) of the following words:

“the following amounts actually incurred as expenditure directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised stock exchange or an interest in a unit portfolio (other than a unit portfolio comprised in any unit trust scheme in property shares)—”;
- (c) by the substitution for sub-items (i) and (ii) of item (h) of subparagraph (1) of the following sub-items:
 - “(i) a marketable security, any gain in respect of that acquisition that was included in that person’s income in terms of section 8A, as has not otherwise been included in the cost of that [acquisition] marketable security;

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- (ii) any other asset, so much of an amount **[in respect of that acquisition]** that has been included in that person's income in terms of section 8(5), or is included in that person's gross income in terms of paragraph (i) of the definition of 'gross income' in section 1, as has not otherwise been included in the cost of that **[acquisition]** asset;"; 5
- (d) by the substitution in subsection (1) for the words following sub-item (iv) of item (h) of the following words:
"which must for the purposes of this Part be treated as expenditure incurred in respect of **[the acquisition of]** that asset."; 10
- (e) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:
"The **[base cost]** expenditure incurred by a person in respect of an asset **[acquired by a person]** does not include any of the following amounts—"; 15
- (f) by the deletion of the word "and" at the end of item (a) of subparagraph (2);
- (g) by the addition of the word "and" at the end of item (b) of subparagraph (2); 15
- (h) by the insertion after item (b) of subparagraph (2) of the following item:
"(c) the valuation date value of any option or right to acquire any marketable security contemplated in section 8A(1).";
- (i) by the substitution in subparagraph (3) for the words preceding item (a) of the following words: 20
"The **[base cost]** expenditure contemplated in subparagraph (1), incurred by a person in respect of an asset **[acquired by a person]** must be reduced by any amount which **[has been included in terms of subparagraphs (1) and (2), and which]**—".
- (2) Subsection (1) shall come into operation on 1 October 2001. 25

Amendment of paragraph 23 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

27. (1) Paragraph 23 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for sub-item (iii) of item (a) of the following sub-item: 30
"(iii) 'B' is the person's base cost **[in]** of the interests calculated immediately prior to the disposal; and".
- (2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of paragraph 32 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

28. (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for the words preceding item (a) of the following words: 35
"The base cost of identical assets **[may]** must be determined by using one of the following methods—".
- (2) Subsection (1) shall come into operation on 1 October 2001. 40

Amendment of paragraph 45 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

29. (1) Paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph: 45
"(2) Where more than one natural person or special trust jointly holds an interest in **[that]** a primary residence at the same time, the amount to be disregarded in terms of subparagraph (1) must be apportioned in relation to each interest so held."
- (2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of paragraph 46 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

30. (1) Paragraph 46 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of the following item:

“(b) is used mainly for domestic or private purposes together with that residence; and”.

(2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

31. Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution of the words preceding item (a) of the following words:

“(1) A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in the receipt by or an accrual to that person of an amount—”

(b) by the substitution in item (a) for the words preceding sub-item (i) of the following words:

“in respect of a policy [as defined in section 29A with an insurer as defined in that section], where that person—”;

(c) by the addition of the following subparagraph:

“(2) For the purposes of subparagraph (1), ‘policy’ means a policy as defined in section 29A with an insurer.”.

Amendment of paragraph 60 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

32. (1) Paragraph 60 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of subparagraph (2) of the following item:

“(b) [where] by any natural person, unless that form of gambling, game or competition is [not] authorised by, [or] and conducted in terms of, the laws of the Republic.”.

(2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of paragraph 66 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

33. (1) Paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (a) of subparagraph (1) of the following item:

“(a) a person disposes of an asset qualifying for a capital allowance or deduction in terms of section 11(e), 12B, 12C, 12E, 14 or 14bis;”.

(2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of paragraph 84 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

34. Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraphs (a) and (b) of subsection (4) of the following paragraphs:

“(a) issued on or before [1 July 2001] 31 August 2001; and

(b) incorporated in this Schedule on or before 31 [December 2001] July 2002.”.

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

35. (1) Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

- “(2) [The provisions of subparagraph (3) apply] Where a person—
- (a) acquired an asset during the transitional period by means of a non-arm’s length transaction, that person shall for purposes of paragraph 30 be treated as having acquired that asset—
- (i) at the time when the person who disposed of that asset acquired that asset; and 5
- (ii) at a cost equal to the base cost of that asset in the hands of the person who disposed of it; or
- (b) acquired an asset during the transitional period directly or indirectly from a person who was a connected person in relation to that person at— 10
- (i) the time of that acquisition; or
- (ii) any time during the period from the date of that acquisition up to a subsequent disposal of that asset by that person within three years of that acquisition,
- that person shall for purposes of paragraph 30 be treated as having acquired that asset— 15
- (aa) at the time when that connected person acquired that asset, or is treated as having acquired that asset in terms of this paragraph; and
- (bb) at a cost equal to the base cost of that asset in the hands of that connected person, or an amount which is treated as the base cost of that asset in the hands of that connected person in terms of this paragraph; or 20
- (c) reacquired an asset within a period of ninety days after its disposal during the transitional period—
- (i) by means of a non-arm’s length transaction; or 25
- (ii) directly or indirectly to a connected person in relation to that person,
- that person shall for the purposes of paragraph 30 be treated as having reacquired that asset—
- (aa) at the time when that person originally acquired that asset prior to that disposal; and 30
- (bb) at a cost equal to the base cost of that asset at the time of that disposal; or
- (d) acquired an asset within a period of ninety days after the disposal, during the transitional period, of a substantially similar asset that was disposed of— 35
- (i) by means of a non-arm’s length transaction; or
- (ii) directly or indirectly to a connected person in relation to that person,
- in order to replace the asset so disposed of, that person shall for the purposes of paragraph 30 be treated as having acquired that asset— 40
- (aa) at the time when that person acquired the substantially similar asset; and
- (bb) at a cost equal to the base cost of that substantially similar asset at the time of that disposal.”; and 45
- (b) by the deletion of subparagraph (3).
- (2) Subsection (1) shall come into operation on 1 October 2001.

Insertion of section 8 in Act 91 of 1964

36. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 7:

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“Reports of cargo landed and unpacked and packed or loaded

8. Notwithstanding the provisions of sections 7 and 12, the Commissioner may by rule prescribe that—

- (a) any report including any manifest or other report listing and describing cargo carried by or loaded on to any ship, aircraft, railway train or other vehicle arriving at or departing from any place in the Republic, as the case may be; or
 - (b) any outturn report or other report concerning goods landed from or unpacked from or packed into or loaded on to any such ship or aircraft, as the case may be; or
 - (c) any outturn report or other report in respect of any imported goods unpacked while under the control of any person after landing thereof at any place approved by the Commissioner,
- shall be in such form containing such particulars and shall be submitted to the Controller by such person in such circumstances and at such times as may be specified in such rule.”.

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995 and section 48 of Act 53 of 1999

37. (1) Section 18 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 - “(a) except as prescribed by rule, the licensed remover of goods in bond contemplated in section 64D may remove in bond—
 - (i) any imported goods landed in the Republic; or
 - (ii) any excisable or fuel levy goods manufactured in a customs and excise warehouse; or
 - (iii) any goods stored in a customs and excise warehouse, to any other place in the Republic appointed as a place of entry or warehousing place under this Act or to any other warehousing place in a territory in the common customs area approved by the government of that territory for warehousing in a customs and excise warehouse, or any such imported goods landed in the Republic to any place outside the common customs area;”;
- (b) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs:
 - “(b) the master of a ship or pilot of an aircraft [**or person in charge of any vehicle**] from which any goods were landed at a place in the Republic to which such goods were not consigned may remove such goods in bond to the place to which they were consigned provided evidence is produced to the Controller before entry for removal of the identity of such goods and that the goods in question were consigned to the place to which they are proposed to be removed;
 - (c) except if the Commissioner determines otherwise by rule, the owner of or any person beneficially interested in any goods which are in transit through the Republic from any other territory in Africa to any place outside the Republic may remove such goods in bond from the place where they entered the Republic to the place where they are destined to leave the Republic.”.

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

Amendment of section 18A of Act 91 of 1964, as inserted by section 5 of Act 84 of 1987 and amended by section 12 of Act 45 of 1995

38. (1) Section 18A of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) No goods shall be exported in terms of this section—
 - (a) until they have been entered for export; and

(b) unless, except as otherwise provided in the rules, they are removed for export by a licensed remover in bond as contemplated in section 64D.”.

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

Amendment of section 19 of Act 91 of 1964, as amended by section 3 of Act 95 of 1965, section 7 of Act 105 of 1969 and section 13 of Act 45 of 1995

39. (1) Section 19 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (9) of the following subsection:

“(9)(a) Except with the permission of the Commissioner, which shall only be granted in circumstances which he on good cause shown considers to be [exceptional] reasonable and subject to such conditions as he may impose in each case, no imported goods entered for storage or excisable or fuel levy goods manufactured in a customs and excise warehouse, excluding spirits or wine in the process of maturation or maceration, shall be retained in any customs and excise warehouse for a period of more than [five] two years from the time the imported goods were first entered for storage or from the time the excisable or fuel levy goods were deemed to have been manufactured in terms of section 44(2).

(b) Where goods which are stored in such warehouse on 31 July 2001, have on that date been stored in any such warehouse for a period of two years or longer, such goods shall, except if the Commissioner permits a longer period as contemplated in paragraph (a), be entered for home consumption or for export and exported within three months after such date.”.

Insertion of section 19A in Act 91 of 1964

40. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 19:

“Special provision in respect of customs and excise warehouses in which excisable or fuel levy goods are manufactured or stored

19A.(1)(a) Notwithstanding anything to the contrary contained in this Act the Commissioner may by rule, in respect of any excisable goods specified in Section A of Part 2 of Schedule No. 1 or fuel levy goods or any class or kind of such goods manufactured in the Republic—

- (i) determine whether any such goods specified in such rule shall be entered or be deemed to have been entered for home consumption at the time of issuing of any prescribed document and removal from—
 - (aa) any customs and excise manufacturing warehouse;
 - (bb) any customs and excise manufacturing warehouse to which the goods have been removed from any other such warehouse after a particular stage of manufacture during the process of manufacture of any such goods; or
 - (cc) any customs and excise storage warehouse licensed by the Commissioner for any special or limited purpose to which such goods are allowed to be removed by the Commissioner after manufacture;
- (ii) restrict the licensing of customs and excise storage warehouses in respect of such goods or any class or kind of such goods to such persons and for such special or limited purposes as may be specified in such rule;
- (iii) prescribe—
 - (aa) the time and manner of payment of duty in respect of goods so entered or deemed to have been so entered;
 - (bb) any deferment of payment of duty, the conditions on which such deferment is granted and the period, or differentiated periods of deferment, in respect of any licensee or any class or kind of such goods;
 - (cc) the accounts to be kept and the accounts and other documents to be submitted with such payment;

- (dd) any procedures or requirements or documents relating to the entry and removal of goods from and to any such customs and excise warehouse or for export or for use under rebate of duty;
- (ee) all other matters which are required or permitted in terms of this section to be prescribed by rule; 5
- (ff) any other matter which the Commissioner may consider necessary and useful to achieve the effective and efficient administration of the provisions of this section.
- (b) Except as otherwise provided in this section or in any such rule, the provisions of section 38(4) shall apply *mutatis mutandis* to any goods removed from any customs and excise warehouse as contemplated in paragraph (a). 10
- (2) If any duty is not paid on the date prescribed in the rules for this section, the amount unpaid shall constitute a debt due to the State, and—
- (a) the Commissioner may, without prior notice to the licensee— 15
- (i) where payment is not made on or before the prescribed date on two occasions in a calendar year, prohibit for any reasonable period the removal of any goods from such warehouse unless the goods are duly entered and the duty paid prior to such removal;
- (ii) claim the amount from the surety where security is furnished in the form of a surety bond or take such legal steps, including enforcement of the provisions of the Act, as the Commissioner may deem necessary and appropriate in the circumstances; 20
- (b) the licensee shall—
- (i) notwithstanding the provisions of section 91, but subject to the provisions of section 93, be liable to payment of an amount not exceeding 10 per cent of the duty concerned as a penalty; 25
- (ii) be liable to interest from the day following the date on which payment should have been made as contemplated in section 105;
- (c) the Commissioner may impose any reasonable conditions when removing the prohibition referred to in paragraph (a)(i). 30
- (3)(a) When this section comes into operation the excisable or fuel levy goods concerned shall not be removed to any customs and excise warehouse unless such warehouse is another such manufacturing warehouse or a storage warehouse licensed for any special or limited purpose as contemplated in subsection (1). 35
- (b) The Commissioner may—
- (i) approve any existing licence for any customs and excise storage warehouse as a storage warehouse for such special or limited purposes; 40
- (ii) cancel the licence of any customs and excise storage warehouse which is not licensed for such special or limited purpose within three months after the date upon which this section comes into operation or within any longer period as the Commissioner may on good cause shown consider reasonable. 45
- (4)(a) The Commissioner may allow any imported goods to be mixed with locally produced excisable or fuel levy goods of the same class or kind in a customs and excise manufacturing warehouse licensed for the manufacture of such locally-produced goods on payment of any difference in duty between the duty leviable on such imported goods and locally-produced goods. 50
- (b) Notwithstanding anything to the contrary in this Act contained, any such goods when so mixed shall be subject to the duties leviable and the

manufacturing, accounting and removal procedures prescribed in terms of this Act in respect of excisable goods or fuel levy goods, as the case may be, manufactured in such warehouse.”.

(2) Subsection (1) or any part thereof shall come into operation on the date or dates fixed, and in respect of the goods specified, by the President by proclamation in the *Gazette*. 5

Amendment of section 20 of Act 91 of 1964, as amended by section 4 of Act 95 of 1965, section 8 of Act 105 of 1969, section 15 of Act 98 of 1980, section 1 of Act 86 of 1982, section 6 of Act 84 of 1987, section 14 of Act 59 of 1990 and section 59 of Act 30 of 1998 10

41. (1) Section 20 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“(4) Subject to section 19A, no goods which have been stored or manufactured in a customs and excise warehouse shall be taken or delivered from such warehouse except in accordance with the rules and upon due entry for [one or other] any of the following purposes—”.

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

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 18 of Act 59 of 1990 and section 28 of Act 45 of 1995 20

42. (1) Section 38 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) Every exporter of any goods shall, before such goods are exported from the Republic, or at the times and in the circumstances prescribed by rule, deliver [during the hours of any day prescribed by rule,] to the Controller a bill of entry in the prescribed form [but the Commissioner may—

- (i) if no export duty is payable on and no obligation or condition is to be fulfilled or complied with under any law in respect of such goods; or 30
- (ii) in the case of goods to be exported overland by way of a vehicle (excluding an aircraft and a train) which are loaded for export at a place other than a place appointed under section 6 where goods may be entered for customs and excise purposes,

allow such a bill of entry to be delivered at such time as he deems reasonable].”.

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

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995 and section 51 of Act 53 of 1999 40

43. (1) Section 44 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following subsection: 45

“(13)(a) The Commissioner may allow by rule any master, pilot or other carrier, container operator or depot operator to deliver any imported goods before due entry thereof to any other person licensed or registered in terms of this Act as the Commissioner may determine and on compliance with such conditions and procedures as may be prescribed in such rule. 50

(b) The liability for duty in respect of such goods of—

- (i) such master, pilot or other carrier, container operator or depot operator shall cease upon lawful delivery thereof to such other person; and
- (ii) such other person shall cease—
 - (aa) upon lawful delivery to the importer or the importer's agent after due entry thereof;
 - (bb) where due entry has not been made in respect of such goods, upon delivery thereof to the State warehouse or other place indicated by the Controller for the purposes of this section; or
 - (cc) on compliance with such conditions and procedures as the Commissioner may prescribe in such rule.”.

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

Substitution of the heading of Chapter VIII of Act 91 of 1964

44. The following heading is hereby substituted for the heading of Chapter VIII of the Customs and Excise Act, 1964:

“Registration, Licensing and Accredited Clients”.

Insertion of section 59A in Act 91 of 1964

45. (1) The following section is hereby inserted in Chapter VIII of the Customs and Excise Act, 1964, before section 60:

“Registration of persons participating in activities regulated by this Act

59A.(1)(a) Notwithstanding any registration prescribed in terms of any other provision of this Act, the Commissioner may require all persons or any class of persons participating in any activities regulated by this Act, to register in terms of this section and its rules.

(b) The Commissioner may by rule prescribe the following—

- (i) any general or particular category of registration;
- (ii) the application form for registration, the qualifying requirements for any category of registration and the documents and information to be furnished in support of the application;
- (iii) the activities and persons included or excluded from registration;
- (iv) any date from which any person or the different dates from which any class of persons shall be required to register under this section and its rules before transacting any business in relation to customs and excise matters;
- (v) any reasonable extension of the date or dates specified under the provisions of subparagraph (iv);
- (vi) procedures for amendment of registration particulars; and
- (vii) any other matter which the Commissioner may consider reasonably necessary and useful to regulate such registration.

(2)(a) The Commissioner may refuse any application for registration or cancel or suspend any registration.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).”.

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

Amendment of section 60 of Act 91 of 1964, as substituted by section 20 of Act 105 of 1969, and amended by section 11 of Act 86 of 1982, section 25 of Act 59 of 1990, section 9 of Act 19 of 1994, section 44 of Act 45 of 1995 and section 57 of Act 53 of 1999

46. Section 60 of the Customs and Excise Act, 1964, is hereby amended—

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

“(1)(a) No person shall perform any act or be in possession of or use anything in respect of which a licence is [required under this Act] prescribed

in Schedule No. 8 unless such person has obtained the appropriate licence which shall not be issued unless the prescribed licence fee has been paid.

(b) The activities for which a licence is required, the persons who are required to licence, the procedures, conditions, which may include the furnishing of security, and any other requirements relating to such licence, if not prescribed elsewhere in this Act, may be prescribed in the Notes to the item in which such licence is specified in Schedule No. 8 and any rules made by the Commissioner under the provisions of this Act.”:

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

“(2) The Commissioner may, subject to review by the High Court—

(a) refuse any application for a new licence or refuse any application for a renewal of a licence if—

(i) the applicant—

(aa) does not comply in respect of such application with the requirements specified by rule or any condition imposed by the Commissioner;

(bb) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for a licence;

(ii) the applicant or any employee of such applicant has—

(aa) contravened or failed to comply with the provisions of this Act; or

(bb) been convicted of an offence under this Act; or

(cc) been convicted of an offence involving dishonesty; or

(dd) failed to comply with any condition or obligation imposed by the Commissioner in respect of such licence;

Provided that subparagraphs (aa) to (cc) shall not apply in respect of an employee if the applicant proves that he was not a party to or could not prevent any such act or omission by such employee; or

(b) cancel or suspend for a specified period any licence—

(i) if the holder of such licence—

(aa) is sequestered or liquidated; or

(bb) no longer carries on the business for which the licence was issued; or

(cc) is no longer qualified according to the qualifications prescribed in the rules; or

(dd) failed to pay any amount demanded under this Act within 30 days from the date of such demand; or

(ii) if the holder of such licence or the employee of such licensee has—

(aa) contravened or failed to comply with the provisions of this Act; or

(bb) been convicted of an offence under this Act; or

(cc) been convicted of an offence involving dishonesty; or

(dd) failed to comply with any condition or obligation imposed by this Act or by the Commissioner in respect of such licence;

Provided that subparagraphs (aa) to (cc) shall not apply in respect of an employee if the holder proves that he was not a party to or could not prevent any such act or omission by such employee:

Provided that before a licence is cancelled or suspended, except when any demand for any amount remains unpaid for a period exceeding 30 days from the date of the demand, the Commissioner shall—

- (a) give 21 days notice to the licensee of the proposed cancellation or suspension;
- (b) provide reasonable information concerning any allegation and grounds for the proposed cancellation or suspension;
- (c) provide a reasonable opportunity to respond and make representations as to why the licence should not be cancelled or suspended.”. 5

Amendment of section 64B of Act 91 of 1964, as inserted by section 19 of Act 112 of 1977, as substituted by section 46 of Act 45 of 1995 and amended by section 58 of Act 53 of 1999

47. Section 64B of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (2) of the following paragraphs: 10

“(c) The Commissioner may prescribe by rule—

- (i) a date from which the applicant and employees of the applicant must be in possession of a qualification obtained at such time and with at least such qualifying mark as may be stated in such rule; 15
- (ii) any other matter which may be reasonably necessary and useful to achieve the efficient and effective administration of the objects of this section.

(d) For the purposes of paragraph (c), ‘applicant’ means any natural person or a director of a company or member of a close corporation or a partner of a partnership, who participates in the clearing agents’ business of the company, close corporation or partnership, as the case may be.”. 20

Insertion of sections 64D and 64E in Act 91 of 1964

48. (1) The following sections are hereby inserted in the Customs and Excise Act, 1964, after section 64C: 25

“Licensing of remover of goods in bond

64D. (1) No person, except if exempted by rule, shall remove any goods in bond in terms of section 18(1)(a) or for export in terms of section 18A, or any other goods that may be specified by rule unless licensed as a remover of goods in bond in terms of subsection (3). 30

(2)(a) The expression ‘remover in bond’ in this Act shall, unless the context otherwise indicates, include any person that removes any goods contemplated in subsection (1).

(b) Any remover in bond exempted from licensing by rule shall, in addition to any provisions of this Act governing the removal or carriage of goods in bond generally, comply with such other relevant requirements as may be prescribed in this section and its rules. 35

(3)(a) Application for such licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirement that may be prescribed in any other rule and as may be determined by the Commissioner in each case. 40

(b) The Commissioner may subject to such conditions as he may prescribe by rule and such obligations as he may in each case impose licence any person applying therefor as a remover of goods in bond. 45

(4)(a) The Commissioner may by rule prescribe technical specifications and other requirements in respect of any vehicle, container or other transport equipment used in the removal or carriage of any goods in bond.

(b) The Commissioner may, after the date this section comes into operation, determine a date by rule from which no person shall remove any goods in bond under this Act in any vehicle container or other transport 50

equipment that is not approved by the Commissioner as complying with the specifications and other requirements prescribed in such rule.

(c) Any vehicle container or other transport equipment used for the removal of goods in bond under this section shall be marked as prescribed by rule.

(5)(a) Before any person is licensed as a remover of goods in bond such person shall furnish such security and enter into such agreement as the Commissioner may require.

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

(6) (a) In addition to any liability incurred under this Act a licensed remover of goods in bond shall be liable for the fulfilment of all obligations imposed under this Act on any other person in respect of any goods removed or carried by such remover including the payment of duties and charges and to any penalties or amounts demanded under section 88(2)(a).

(b) The liability of such remover shall in no way affect the liability incurred under this Act in respect of such goods by the master, pilot, container operator, importer, exporter, manufacturer, licensee or any other principal or any agent referred to in section 99.

(7) No security provided by a licensed remover of goods in bond shall be utilised or accepted as security for the fulfilment of any obligation in terms of this Act by any other such remover of goods in bond.

(8)(a) The Commissioner may—

- (i) refuse any application for a new licence or any application for a renewal of a licence by a remover of goods in bond; or
- (ii) suspend or cancel such licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).

(9) The Commissioner may make rules—

- (a) to delegate or assign, subject to section 3(2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner in accordance with the provisions of this Act to any officer or any other person;
- (b) to prescribe forms and procedures or any condition to be complied with by any remover for the purpose of regulating the removal of goods in bond;
- (c) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;
- (d) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.

Accredited clients

64E. (1)(a) The Commissioner may confer accredited client status on any applicant therefor who is licensed or registered under any provision of this Act.

(b) Accredited client status may be acquired on conforming with any reasonable requirements determined by the Commissioner which may include that the applicant proves—

- (i) an appropriate record of compliance with customs and excise procedures;
- (ii) that the accounting records and other documents kept for providing evidence of compliance with customs procedures utilise information prepared in a manner consistent with general accounting principles appropriate to the procedure concerned;

- (iii) that an effective computer system is in operation capable of performing the functions, and in respect of which an agreement has been concluded, as contemplated in section 101A;
- (iv) that the person who will administer the accredited client requirements has sufficient knowledge of customs laws and procedures to implement and maintain an efficient and effective accredited client compliance system; 5
- (v) that the business in respect of which application is made for accredited client status has sufficient financial resources;
- (vi) any other measurable requirements which the Commissioner may require in support of the application. 10
- (2) The Commissioner may—
 - (a) conduct such investigation as may be reasonably necessary to verify any statements in the application;
 - (b) enter into any agreement with the applicant which may include, notwithstanding any other provisions of this Act, deferment of payment of any duty or value-added tax payable on the importation of any goods into the Republic and payment thereof as may be specified in such agreement; 15
 - (c) prescribe by rule the following: 20
 - (i) the application form to be completed and the supporting documents to be furnished by each applicant according to the customs and excise procedures applicable to the activities of the applicant;
 - (ii) the form of agreement to be entered into between the applicant and the Commissioner; 25
 - (iii) standards of conduct which may include procedures to be followed in respect of—
 - (aa) the entry of goods;
 - (bb) the payment of duty; 30
 - (cc) the documents to be processed;
 - (dd) the control of goods; or
 - (ee) goods carried or removed; and
 - (iv) any other matter that may be reasonably necessary and useful to regulate the benefits provided in terms of this section; 35
 - (d) delegate, by rule, subject to section 3(2), any power which may be exercised or assign the duties that shall be performed by the Commissioner in accordance with the provisions of this Act to any officer or other person.
- (3) (a) The Commissioner may refuse any application for accredited client status or cancel or suspend such status. 40
- (b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).”

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 45

Amendment of section 69 of Act 91 of 1964, as amended by section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 9 of Act 101 of 1985, section 7 of Act 69 of 1988, as substituted by section 12 of Act 68 of 1989, section 1 of Act 111 of 1991, as amended and deleted by section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, and amended by section 6 of Act 44 of 1996 and section 61 of Act 53 of 1999 50

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

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

“For the purpose of assessing the excise duty on any goods manufactured in the Republic and specified in items 126.01, 126.02, 126.03, 126.04 and 126.05 of Section B of Part 2 of Schedule No. 1, the value thereof shall, subject to the provisions of this section, be taken to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale, for consumption in the Republic, for purposes of trade in the principal markets of the Republic in the ordinary course of 55 60

trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any merchant wholesaler in the Republic not deemed to be related as specified in section 66(2)(a) under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on any vehicle for delivery to the purchaser, plus any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 or any value-added tax payable on such goods:";

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

"(c) For the purpose of [this subsection] paragraph (a) the Commissioner may specify—";

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

"(d) For the purposes of assessing the excise duty on any goods manufactured in the Republic and specified in any items of Section B of Part 2 of Schedule No. 1 other than those specified in paragraph (a), the value thereof shall be the 'invoice price' which shall mean—

- (i) the price paid or payable as contemplated in subsection (2)(b), and as the Commissioner may further prescribe by rule, for such goods when sold for home consumption in the ordinary course of trade, in the condition and the usual trade packing ready for sale in the retail trade, to any buyers not deemed to be related as specified in section 66(2)(a); or
- (ii) where the buyers are deemed to be related as specified in section 66(2)(a), the price of the goods when sold at comparable trade and quantity levels to unrelated buyers at or about the same time as the sale to such related buyers;

(e) The invoice price contemplated in paragraph (d) shall—

- (i) exclude the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 and any value-added tax payable on such goods;
- (ii) be reduced by any deduction from such price as may be prescribed by the Commissioner by rule in respect of any goods specified in any such item of Section B of Part 2 of Schedule No. 1.";

- (d) by the substitution for subsection (3) of the following subsection:

"(3) If in the opinion of the Commissioner goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained or has been incorrectly ascertained in terms of subsection (1)[(a)] or (2), as the case may be, the Commissioner may, having regard to the relevant provisions of subsection (1) or (2), determine a value, which shall, subject to the right of appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.".

- (2) Subsection (1) shall be deemed to have come into operation on 1 July 2001.

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

- 50. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended—**

- (a) by the substitution for paragraphs (c) and (d) of subsection (1) of the following paragraphs:

- “(c) a drawback or a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, safeguard duty, surcharge and fuel levy actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall **[subject to the provisions of paragraph (f)(i)]** be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified; and 5
- (d) in respect of any excisable goods or fuel levy goods described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy specified in Part 5 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the excise duty or fuel levy actually paid at the time of entry for home consumption shall **[subject to the provisions of paragraph (f)(i)]** be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6;” 10 15 20
- (b) by the deletion of paragraph (f) of subsection (1);
- (c) by the substitution for subsection (1A) of the following subsections:
- “(1A) Notwithstanding anything to the contrary contained in this Act or any other law—
- (a) (i) a refund of the fuel levy leviable on distillate fuel in terms of Part 5 of Schedule No. 1; and 25
- (ii) a refund of the Road Accident Fund levy leviable on diesel as contemplated in section 5 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996); or
- (iii) only a refund of such Road Accident Fund levy, shall be granted in accordance with the provisions of this section and of item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6 to the extent stated in those items; 30
- (b) such refunds shall be granted to any person who—
- (i) has purchased and used such fuel in accordance with the provisions of this section and the said items of Schedule No. 5 or 6; and 35
- (ii) is registered, in addition to any other registration required under this Act, for value-added tax purposes under the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and for diesel refund purposes on compliance with the requirements determined by the Commissioner for the purposes of this Act and the Value-Added Tax Act; 40
- (c) the Commissioner may withdraw money from the National Revenue Fund for refunding the amount of such Road Accident Fund levy as if it were a fuel levy leviable and paid under this Act and refundable in terms of the said items of Schedule No. 5 or 6; 45
- (d) the Commissioner may—
- (i) pay any such refund upon receipt of a duly completed return from any person who has purchased distillate fuel for use as contemplated in the said item of Schedule No. 5 or 6; 50
- (ii) pay any such refund by means of the system in operation for refunding value-added tax; and
- (iii) for the purposes of payment, set off any amount refundable to any person in terms of the provisions of this section and the said items against any amount of value-added tax payable by such person; 55
- (e) any such payment or set-off by the Commissioner shall be deemed to be a provisional refund for the purpose of this section and the said items of Schedule No. 5 or 6 subject to the production of proof by the user referred to in subsection (1C)(b) at such time and in such form as the Commissioner may determine that the distillate fuel has been— 60

- (i) purchased as claimed on the application for a diesel refund; and
 - (ii) used in accordance with the provisions of this section and the said items of Schedule No. 5 or 6;
- (f) the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), shall *mutatis mutandis* apply in respect of the payment of interest on any amount of fuel levy or Road Accident Fund levy which is being recovered as it is in excess of the amount due or is not duly refundable.
- (1B) (a) The Commissioner shall, at the end of each calendar month, furnish an audited statement, as may be agreed upon between the Commissioner and the Chief Executive Officer of the Road Accident Fund referred to in section 12 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996), to the said Chief Executive Officer, reflecting the quantity of diesel in litres and the amount of the Road Accident Fund levy refunded thereon during such month
- (b) The Chief Executive Officer of the Road Accident Fund shall repay to the Commissioner the amount of the Road Accident Fund levy refunded by the Commissioner not later than the last working day of each calendar month immediately succeeding the calendar month covered by the statement furnished by the Commissioner.
- (c) Any amount so repaid by the Road Accident Fund shall be paid into the National Revenue Fund as if it were a recovery of fuel levy refunded under this section.
- (d) For the purposes of this Act, any refund of Road Accident Fund levy by the Commissioner to any applicant shall be deemed to be a refund of duty and any amount paid which was not duly payable or in excess of the amount due to the applicant shall be recoverable as provided in section 76A and shall, when recovered, be repaid to the Road Accident Fund by the Commissioner each calendar month.
- (e) The Commissioner may enter into a written agreement with the Chief Executive Officer of the Road Accident Fund to regulate any incidental matter which it may be necessary or expedient to regulate in order to achieve or promote the objects of this subsection.
- (1C)(a) Notwithstanding the provision of subsection (1A), the Commissioner may investigate any application for a refund of such levies on distillate fuel to establish whether the fuel has been—
- (i) duly entered or is deemed to have been duly entered in terms of this Act;
 - (ii) purchased in the quantities stated in such return;
 - (iii) delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said items of Schedule No. 5 or 6.
- (b) For the purposes of this section and the said items of Schedule No. 5 or 6—
- (i) 'user' shall mean, according to the context and subject to any note in the said Schedule No. 5 or 6, the person registered for a diesel refund as contemplated in subsection (1A) and as a user as provided in subsection (4A);
 - (ii) 'distillate fuel' includes diesel and 'diesel' includes distillate fuel.
- (c)(i) The refunds specified in the said items of Schedule No. 5 or 6 shall apply to fuel purchased on or after the date the amendment contemplated in section 75(15) comes into operation.
- (ii) Any such fuel purchased shall be deemed to have been used in the order of the dates of such purchases.
- (iii) The extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. 5 or 6 in operation on the date of issue of the invoice concerned, referred to in subsection (4A)(c).
- (iv) If the extent of such refund is amended and for any reason any liability to repay any refund of such levies in respect of any quantity of

fuel which the user may incur in respect of the use of such fuel cannot be assessed or the amount of the levies refundable to such user in terms of any item of Schedule No. 5 or 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Commissioner according to the information at his disposal. 5

(d)(i) Any user who has been granted such a provisional refund shall, in relation to the purchase and use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed in the notes to item 640.03, with a declaration in such form and supported by such documents as may be prescribed in such notes. 10

(ii) Any user who fails to comply with the provisions of paragraph (d)(i) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the said items of Schedule No. 5 or 6 and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable in terms of section 76A. 15

(e)(i) If the amount of the provisional refund paid to the user concerned was not duly refundable or exceeds the amount refundable in terms of the said items of Schedule No. 5 or 6, any such amount or the excess shall be paid by that user upon demand by the Commissioner. 20

(ii) If that user fails to pay the amount demanded in terms of subparagraph (i), such amount shall be recoverable in terms of section 76A.”: 25

(d) by the substitution for subsection (4A) of the following subsection:

“(4A)(a) Any person who registers for a diesel refund as contemplated in subsection (1A) shall in addition register as a user under the provisions of this Act.

(b) Any return for refund of such levies shall be in such form and shall declare such particulars and shall be for such quantities and for such periods and shall be submitted within such period as may be determined by the Commissioner. 30

(c) Any seller of such fuel shall furnish such user with an original invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed in the notes to the item 640.03. 35

(d) Any user shall complete and keep such books, accounts and documents and furnish to the Commissioner at such times such particulars of the purchase, use or storage of such fuel or any other particulars as may be prescribed in the notes to item 640.03. 40

(e)(i) Notwithstanding anything to the contrary in this Act contained, any user of distillate fuel who has been granted such refund and who fails to—

(aa) keep any such invoice;

(bb) complete and keep such books, accounts and documents; or 45

(cc) forthwith furnish any officer at such officer’s request with such invoice and the books, accounts and documents required to be completed and kept.

shall, in addition to any other liability incurred in terms of this Act in respect of the fuel to which such failure relates, be liable, as the Commissioner may determine, for payment of an amount not exceeding the levies refunded on such fuel, unless it is shown by the user within 30 days of the date of any demand for payment of such amount in terms of this section that the fuel has been used in accordance with the provisions of the said items of Schedule No. 5 or 6. 50

(ii) Any amount for which any person is liable in terms of this section shall be payable upon demand by the Commissioner.

(f) The Commissioner may, subject to review by the High Court—

- (i) refuse to register any applicant for registration as contemplated in subsection (1A)(b)(ii) or (4A)(a) if such applicant—
- (aa) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration: 5
 - (bb) has contravened or failed to comply with the provisions of this Act or the Value-Added Tax Act 1991 (Act 89 of 1991);
 - (cc) has been convicted of an offence under this Act, or the said Value-Added Tax Act; or
 - (dd) has been convicted of an offence involving dishonesty;
- (ii) cancel, or suspend for such period as the Commissioner may determine such registration, if such person—
- (aa) could have been refused registration as contemplated in subparagraph (i): 15
 - (bb) fails to complete, keep or furnish such accounts, books or documents or keep such invoice, as may be prescribed in the notes to item 640.03; or
 - (cc) fraudulently claims or receives any payment in respect of any refund provided for in this subsection and the said items of Schedule No. 5 or 6. 20
- (g) For the purposes of the administration of the refunds of levies on distillate fuel as provided in this section and item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6 the Commissioner may, subject to the provisions of section 3(2), delegate by rule any of the Commissioner's powers, duties or functions under this Act to any officer, including any officer employed in administering the provisions of the Value-Added Tax Act, 1991 (Act 89 of 1991). 25
- (h) Any person to whom a refund of levies has been granted in accordance with the provisions of this section and of item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6 who falsely applied for such refund or who uses or disposes of such fuel contrary to such provisions, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any levies refunded, whichever is the greater, or to imprisonment for a period not exceeding ten years, or to both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act. 30 35
- (i) The Commissioner may by rule prescribe any form or procedure or condition reasonably required for the effective administration of such refunds.”: 40
- (e) by the substitution for subsection (7A) of the following subsection:
- “(7A) Any person to whom a refund of **[customs or excise duty or fuel levy]** levies has been granted on any distillate fuel in terms of the provisions of item **[533.01 or]** 540.02 of Schedule No. 5 or item **[609.05.10 or]** 640.03 of Schedule No. 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for **[refund]** registration shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof, failing which such amount or such portion shall be recoverable **[in terms of this Act]** as if it were **[the duty or levy concerned]** a duty payable under this Act.”: 45 50 55
- (f) by the substitution for subparagraph (i) of paragraph (b) of subsection (14) of the following paragraph:
- “(i) in respect of any refund referred to in subsection (1A) within a period determined by the Commissioner as contemplated in subsection (4A)(b);”:
- (g) by the substitution for paragraphs (a) and (b) of subsection (15) of the following paragraphs:
- “(a) The Minister may from time to time by notice in the *Gazette*— 60

- (i) amend Schedule 3, 4, 5 or 6—
 - (aa) in order to give effect to any request by the Minister of Trade and Industry; or
 - (bb) whenever he deems it expedient in the public interest to do so; or
 - (ii) amend Schedule No. 5 or 6 to provide for a refund of fuel levy and the Road Accident Fund levy as contemplated in subsections (1A) and (4A).
- (b) An amendment made under paragraph (a) which repeals any existing provision in Schedule No. 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods, excluding distillate fuels referred to in item [533.01 or] 540.[00]02 of Schedule No. 5, which were imported prior to the date of the relevant notice in the *Gazette*, and an amendment made under the said paragraph which embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods, shall not, except in so far as the Commissioner so directs and subject to such conditions as he may determine, apply in respect of goods which were imported prior to the date of the relevant notice in the *Gazette*.”;
- (h) by the substitution in subsection (18) for the words preceding paragraph (a) and paragraphs (a) and (b) of the following words and paragraphs:

“Subject to the provisions of the proviso to section 20(5) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 and 615.03 of Schedules Nos. 4, 5 and 6 no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Commissioner may allow a deduction from the dutiable quantity of the undermentioned goods of a quantity [equal to] not exceeding the percentage stated below in each case, namely—

 - (a) in the case of wine spirits (ethyl alcohol) manufactured in the Republic and entered for [storage] use and used in a customs and excise [storage] manufacturing warehouse, excluding spirits specified in paragraph (bA), [1,5 per cent] in the manufacture of spirituous beverages, the actual manufacturing loss of [the] any quantity so entered and used or 1.5 per cent thereof, whichever is the least;
 - (b) in the case of spirits (ethyl alcohol), other than wine spirits, manufactured in the Republic, [1,5 per cent, of the quantity so manufactured] and entered for use and used in a customs and excise manufacturing warehouse in [making] the manufacture of spirituous beverages, the actual manufacturing loss of any quantity so entered and used or 1,5 per cent thereof, whichever is the least;”;
- (i) by the substitution in paragraph (d) of subsection (18) for the words preceding the proviso of the following words:

“in the case of imported crude petroleum naphtha for use in the refining of petroleum products, or imported [or excisable] petrol, a percentage equal to the full net loss incurred but not exceeding 0.25 of any quantity entered for storage and stored in a customs and excise storage warehouse during such period as the Commissioner may determine:”;
- (j) by the substitution for paragraph (e) of subsection (18) of the following paragraph:

“(e) in the case of imported [or excisable] petrol, distillate fuels or residual fuel oils, such percentage of any quantity removed in bond unpacked by ship from one place in the Republic to another place in the Republic, as the Commissioner may determine, or, where no such percentage has been so determined, a percentage equal to the full net loss incurred while the goods in question are so removed;”;
- (k) by the substitution in paragraph (f) of subsection (18) for the words preceding the proviso of the following words:

“in the case of imported distillate fuels entered for storage and stored in a customs and excise storage warehouse, a percentage equal to the full net loss incurred but not exceeding 0.15 of any quantity so entered and stored in such warehouse during such period as the Commissioner may determine: Provided that only the owner of a warehouse referred to in section 61(4) shall be entitled to such deduction.”; and

(1) by the insertion after subsection (18) of the following subsection:

“(18A) Notwithstanding the provisions of subsection (18), the Commissioner may by rule prescribe an average percentage deduction, and the circumstances under which such deduction will be allowed, from the dutiable quantity of any excisable goods removed from a customs and excise manufacturing warehouse.”.

(2) (a) Subsection (1)(a), (b), (c), (d), (e), (f) and (g) shall be deemed to have come into operation on 4 July 2001.

(b) Subsection (1)(h), (i), (j), (k) and (l) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Insertion of section 101A in Act 91 of 1964

51. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 101:

“Electronic communication for the purposes of customs and excise procedures

101A. (1) In this section and the rules thereto, unless the context otherwise indicates, the following words and phrases, and their grammatical variations where applicable, shall have the following meanings:

‘access’, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

‘addressee’, means a person who is intended by the originator to receive the electronic message, but does not include an intermediary;

‘affixing a digital signature’, means adoption of a methodology or procedure by a person for the purposes of authenticating an electronic record by means of a digital signature;

‘computer’, means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

‘computer network’, means the interconnection of one or more computers through—

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

‘computer system’, means a device or collection of devices, including input and output devices and capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

‘data’, means a representation of information, knowledge, facts, concepts or instructions which are being or have been prepared in a formalised manner and is intended to be processed, is being or has been processed in a computer system or network and may be in any form (including computer printouts, magnetic optical storage media, punched cards and punched tapes) or stored internally in the memory of the computer;

‘digital signature’, means an electronic signature allocated to a registered user for authentication of electronic records in conformity with the requirements prescribed in this section, the rules and the user agreement;

'electronic form', with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, or similar device;

'electronic record', means data recorded or generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated microfiche;

'function' in relation to a computer, includes logic, control arithmetical process, deletion, storage and retrieval and communications or telecommunication from or within a computer;

'information', includes data, text, images, sound, voice, code, computer programmes, software and databases or microfilm or computer generated microfiche;

'intermediary', with respect to any particular electronic message, means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

'originator', means a person who sends, generates, stores or transmits any electronic message to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

'registered user' means a person registered in terms of the provisions of subsection (3);

'user agreement', means the agreement entered into between the registered user and the Commissioner.

(2)(a) The Commissioner may, notwithstanding anything to the contrary in this Act contained, establish and maintain a computer system for the purposes of the electronic processing of any document and procedure to which this Act relates and matters incidental thereto, which may include—

- (i) the receipt and processing of reports and other documents relating to the arrival and departure of ships, aircraft, vehicles and railway trains and their passengers and cargo and the control of such passengers or cargo;
- (ii) the accounting for the receipt, clearance and release of goods, the storage of goods in customs and excise warehouses or other places and the removal or carriage of goods for any purpose under this Act; and
- (iii) the production or manufacture of any goods and the accounting therefor in compliance with any procedure prescribed under this Act.

(b) No person shall communicate with the Commissioner, a Controller or any officer for any purpose to which this section relates by computer unless such person is a registered user who has entered into a user agreement and complies with any other requirements prescribed under this Act.

(c) Any such user may access the computer system of the Commissioner for purposes of electronically communicating with the Commissioner, a Controller or an officer to the extent specified in the user agreement provided the computer system of the Commissioner can accept the communication.

(3)(a) Application for registration as a user shall be in the form and shall be accompanied by a practice statement and the completed user agreement prescribed by rule.

(b) The applicant shall comply with—

- (i) all the requirements specified in such form and in subsection (5);
- (ii) any additional requirements that may be prescribed in the rules and as may be determined by the Commissioner;
- (iii) the requirements specified in the user agreement.

(4) The Commissioner may set out in such agreement—

- (a) any terms and conditions for regulating computer communication with and by a registered user, including conditions that—
 - (i) the user will use computer equipment and facilities of a class or kind specified in the agreement;

- (ii) the user, when assigned a digital signature by the Commissioner, will ensure the security of the signature in the manner agreed to in the agreement;
 - (iii) where electronic data is received by the Commissioner from the registered user authenticated by electronic signature—
 - (aa) without the authority of the user to whom such signature was allocated; and
 - (bb) before notification to the Commissioner by the user of a breach of security.
 such data shall be taken by the Commissioner to have been communicated by the registered user of such digital signature, as the case may be;
 - (b) whether the applicant has complied with the provisions of subsection (5);
 - (c) any other requirement, including reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required in terms of any provision of this Act;
 - (d) the method and period for which electronic records shall be kept.
- (5)(a) Any applicant for registration shall produce proof in support of the application that—
- (i) adequate measures have been introduced to exercise reasonable care to—
 - (aa) retain control of the digital signature allocated by the Commissioner and for the prevention of its disclosure to any person not authorised to affix such signature;
 - (bb) ensure that information remains complete and unaltered apart from the addition of any change which may occur in the normal course of communication storage and display;
 - (ii) the standard of reliability is in accordance with the standard required in the user agreement and the provisions of this section and the rules.
- (b) If the digital signature has been compromised in any manner the applicant shall inform the Commissioner without delay in the manner prescribed by rule.
- (6)(a) The Commissioner may, after due consideration of the application and the practice statement and after making such enquiries as he may deem necessary, approve the application subject to any reasonable conditions as he may impose in each case.
- (b) The Commissioner may, subject to review by the High Court—
- (i) refuse any application for registration if—
 - (aa) the applicant—
 - (A) does not comply in respect of such application with the requirements contemplated in subsection (3);
 - (B) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;
 - (bb) the applicant or any employee of such applicant—
 - (A) has contravened or failed to comply with the provisions of this Act;
 - (B) has been convicted of an offence under this Act;
 - (C) has been convicted of an offence involving dishonesty; or
 - (D) has failed to comply with any condition or obligation imposed by the Commissioner in respect of such registration:
- Provided that subparagraphs (A) to (C) shall not apply in respect of an employee if the applicant proves that he was not a party to or could not prevent any such act or omission by such employee; or

- (ii) cancel or suspend for a specified period any registration—
- (aa) if the registered user—
- (A) is sequestered or liquidated;
 - (B) no longer carries on the business for which the registration was issued;
 - (C) is no longer qualified according to the qualifications prescribed in the rules; or
 - (D) fails to meet in respect of the computer system used all the compliance requirements and the operational standards required in terms of the user agreement and prescribed by the Commissioner as contemplated in this section;
- (bb) if the registered user or the employee of such user has—
- (A) contravened or failed to comply with the provisions of this Act;
 - (B) been convicted of an offence under this Act;
 - (C) been convicted of an offence involving dishonesty; or
 - (D) failed to comply with any condition or obligation imposed by this Act or by the Commissioner in respect of such registration:
- Provided that subparagraphs (A) to (C) shall not apply in respect of an employee except an employee to whom a digital signature was allocated, if the holder proves that he was not a party to or could not prevent any such act or omission by such employee:
- Provided further that before a registration is cancelled or suspended, the Commissioner shall—
- (a) give 21 days notice to the registered user of the proposed cancellation or suspension;
 - (b) provide reasonable information concerning any allegation and grounds for the proposed cancellation or suspension;
 - (c) provide a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.
- (7)(a) When the Commissioner so registers a person or cancels or suspends such registration, the registration, cancellation or suspension shall have effect from the day on which the notice was signed.
- (b) The Commissioner may prescribe a registration fee or fee for the issuance of a digital signature by rule.
- (c) The Commissioner shall, on registering a user, allocate to the user—
- (i) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the agreement; or
 - (ii) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the agreement.
- (d) Where the registered user is a clearing agent, licensed under this Act no employee of such agent who is not licensed as a clearing agent shall be allocated a digital signature.
- (8)(a) For the purposes of section 101(2B), where any provision of this Act prescribes or requires that documents, records, information or the like shall be retained for a specific period, that requirement shall be deemed to have been satisfied if such documents, records, information or the like are so retained in electronic form, if—
- (i) the information contained therein remains accessible so as to be subsequently usable;

- (ii) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- (iii) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record. 5
- (b) An electronic communication or the record of such communication shall be attributed to the originator—
- (i) if it was sent by the originator; 10
- (ii) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
- (iii) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.
- (9)(a) Where the Commissioner and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by— 15
- (i) any communication by the Commissioner, electronic or otherwise; or 20
- (ii) conduct by the Commissioner or any officer sufficient to indicate to the registered user that the electronic communication has been received.
- (b) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent. 25
- (c)(i) The dispatch of an electronic communication occurs when it enters a computer resource outside the control of the originator. 30
- (ii) The time of receipt of an electronic communication shall be when the electronic communication enters the designated computer—
- (aa) where the electronic communication is by a registered user, at any office of a Controller set out in item 202.00 of the Schedule to the rules, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt; or 35
- (bb) if the electronic communication is by the Commissioner or any Controller or officer to a registered user, at the place of receipt that is stipulated in the 'user agreement' referred to in subsection (4). 40
- (10)(a) Whenever any registered user is authorised to submit and sign electronically any manifest, bill of entry, return, prescribed form, document, schedule, application, declaration, statement, report, notice or the like, which is required to be submitted and signed in terms of the provisions of this Act, such signature electronically affixed to such electronic communication and communicated to the Commissioner, a Controller or any officer, shall, for the purposes of this Act, have the force and effect as if it was affixed thereto in manuscript and acceptance thereof, shall not be denied if it is in conformity with the electronic signature agreed to by and between the Commissioner and the registered user. 45 50
- (b) The signature and authentication of any electronic communication referred to in paragraph (a) shall be effected as prescribed by rule.
- (c) For the purposes of the definition of digital signature, a digital signature is an electronic signature created by computer, intended by the registered user using it and by the Commissioner accepting it to have the same force and effect as the use of a manual signature and which is— 55
- (i) unique to the registered user;

- (ii) capable of verification;
- (iii) linked or attached to electronically transmitted data in such a manner so as to authenticate the attachment of the signature to particular data and the integrity of the data transmitted so that if the data is changed the electronic signature is invalidated;
- (iv) under the sole control of the registered user; and
- (v) conforms in all respects to the requirements prescribed by the Commissioner by rule and contained in the user agreement.

(11) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister, the Commissioner or any officer is a party, the question arises whether an electronic signature affixed to any electronic communication to the Commissioner was used in such communication with or without the consent and authority of the registered user, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was, subject to the provisions of subsection (4), so used with the consent and authority of the registered user.

(12)(a) Notwithstanding anything to the contrary in this Act or in any other law contained, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister, the Commissioner or any officer is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of the user agreement referred to in subsection (4) shall establish the basis upon which any court of competent jurisdiction shall determine such issues.

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence—

- (i) on the sole grounds that it is an electronic data message; or
- (ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(c)(i) Information in the form of a data message shall be given due evidential weight.

(ii) In assessing the evidential weight of a data message a court shall have regard to—

- (aa) the reliability of the manner in which the data message was generated, stored and communicated;
- (bb) the reliability of the manner in which the integrity of the information was maintained;
- (cc) the manner in which its originator was identified;
- (dd) whether these functions were in compliance with the user agreement; and
- (ee) the requirements of this section, and any other relevant factor.

(13) Whenever, because a computer system is inoperative, a registered user or the Commissioner cannot transmit or receive an electronic transmission required for purposes of this Act, the registered user and the Commissioner shall communicate with each other by paper document as prescribed by rule.

(14) The Commissioner may at any time require from any registered user who transmitted any electronic communication under this section for purposes of this Act the production of any original document required to be produced under any of the provisions of the Act.

(15)(a) Any person, other than the registered user of an electronic signature, using such signature in any electronic communication to the Commissioner for any purpose under this Act without the consent and authority of such registered user, shall be guilty of an offence and liable on

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conviction for every time such signature was so used to a fine not exceeding R100 000 or treble the value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act. 5

(b) Any person who—

- (i) makes a false electronic record or a part of an electronic record or who makes a false entry in any electronic record or who makes a false statement in such electronic record; or 10
- (ii) dishonestly or fraudulently—
 - (aa) makes, signs or executes an electronic record;
 - (bb) makes or transmits any electronic record or part of any electronic record;
 - (cc) affixes any digital signature on any electronic record; or 15
- (iii) without lawful authority dishonestly and fraudulently alters any electronic record in any material part thereof after it had been made, executed or affixed with digital signature; or
- (iv) dishonestly or fraudulently causes any other person to sign, execute or alter an electronic record or to affix a digital signature on any electronic record, 20

shall be guilty of an offence and liable on conviction for every such offence to a fine not exceeding R100 000 or treble the value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act. 25

(16) The Commissioner may make rules—

- (a) to delegate, subject to section 3(2), any power which may be exercised or assign any of the duties which shall be performed in terms of this Act to any officer or any other person; 30
- (b) regarding all matters which are required or permitted in terms of this section to be prescribed by rule; and
- (c) in respect of any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this section.”. 35

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

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 and section 64 of Act 30 of 2000 40 45 50

52. (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 21 February 2001.

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

53. (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, and 10 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 2000 shall not lapse by virtue of the provisions of section 48(6), 49, 56(3) or 75(16) of that Act. 5

(2) The amendments of Part 2 and Part 5 of Schedule No. 1 of the Customs and Excise Act, 1964, made under section 48 of that Act by Government Notice R184 and R185 of 21 February 2001 in respect of the said Part 2 and Government Notice R332 of 6 April 2001 in respect of the said Part 5 shall nor lapse by virtue of the provisions of section 48(6) of that Act. 10

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 and section 40 of Act 5 of 2001 15

54. Section 1 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the deletion of the definition of “bill of exchange”;
- (b) by the deletion of the definition of “cheque”; and 20
- (c) by the deletion of the definition of “promissory note”.

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 and section 5 of Act 69 of 1989 25

55. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended by the deletion of paragraph (c) of subsection (1).

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any bill of exchange or promissory note executed on or after that date. 30

Amendment of section 10 of Act 77 of 1968, as amended by section 5 of Act 95 of 1978

56. (1) Section 10 of the Stamp Duties Act, 1968, is hereby amended by the deletion of paragraph (c) of subsection (1).

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any promissory note executed on or after that date. 35

Repeal of section 16 of Act 77 of 1968

57. (1) Section 16 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any bill of exchange or promissory note executed on or after that date. 40

Repeal of section 17 of Act 77 of 1968, as amended by section 22 of Act 87 of 1988

58. (1) Section 17 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any bill of exchange executed on or after that date. 45

Repeal of section 18 of Act 77 of 1968, as amended by section 23 of Act 87 of 1988

59. (1) Section 18 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any promissory note executed on or after that date.

Repeal of section 25 of Act 77 of 1968

60. (1) Section 25 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any document of security or pledge, or any act of suretyship, indemnity or guarantee executed on or after that date.

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Repeal of Item 5 of Schedule 1 to Act 77 of 1968, as amended by section 24 of Act 103 of 1969, section 16 of Act 88 of 1974, section 14 of Act 114 of 1977, section 9 of Act 92 of 1983 and section 9 of Act 118 of 1984

61. (1) Item 5 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any bill of exchange or promissory note executed on or after that date.

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Amendment of Item 6 of Schedule 1 to Act 77 of 1968, as inserted by section 10 of Act 118 of 1984 and amended by section 4 of Act 71 of 1986, section 32 of Act 87 of 1988, section 7 of Act 136 of 1992, section 15 of Act 37 of 1996 and section 78 of Act 53 of 1999

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62. Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution in paragraph (c) for the words following subparagraph (ii) of the following words:

“into which the depositor may deposit money and from which the institution or the Postbank where the account is held, may make a payment to any other person or electronically transfer an amount to any other account of such depositor or to the account of any other person.”

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Repeal of Item 11 of Schedule 1 to Act 77 of 1968, as amended by section 12 of Act 89 of 1972, section 16 of Act 114 of 1977, section 7 of Act 102 of 1979, section 10 of Act 92 of 1983 and section 11 of Act 32 of 1999

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63. (1) Item 11 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any customs and excise document executed on or after that date.

Repeal 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, section 36 of Act 9 of 1989 and section 74 of Act 30 of 2000

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64. (1) Item 20 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2001 and shall apply in respect of any document of security or pledge, or any act of suretyship, indemnity or guarantee executed on or after that date.

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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 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 and section 64 of Act 59 of 2000

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

(a) by the insertion after the definition of “commencement date” of the following definition:

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“ ‘commercial accommodation’ means—

(a) accommodation, including the supply of domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guesthouse, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat,

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- or similar establishment, which is regularly or systematically let and where the total annual receipts from the letting thereof is reasonably expected to exceed R48 000 per annum:
- (b) accommodation in a home for the aged, children, physically or mentally handicapped persons: and
 - (c) a hospice:"
- (b) by the deletion of the definition of "commercial rental establishment";
- (c) by the substitution for the definition of "domestic goods and services" of the following definition:
- " 'domestic goods and services' means the provision to a natural person of the right to occupy for residential purposes the whole or part of the accommodation provided in any **[commercial rental establishment]** enterprise supplying commercial accommodation, including, where it is provided as part of the right of occupation, the provision of—
- (a) cleaning and maintenance;
 - (b) electricity, gas, air conditioning or heating;
 - (c) a telephone, television set, radio or other similar article;
 - (d) furniture and other fittings;
 - (e) meals:"
- (d) by the substitution for the definition of "dwelling" of the following definition:
- " 'dwelling' means any building, premises, structure or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use as a place of residence or abode of any natural person, together with any appurtenances belonging thereto and enjoyed therewith, but does not include **[a commercial rental establishment]** the supply of domestic goods and services in an enterprise supplying commercial accommodation;"
- (e) by the deletion of the definition of "residential rental establishment".
- (2) Subsection (1) shall come into operation on 1 October 2001.

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 and section 88 of Act 30 of 1998

66. Section 6 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the deletion of paragraph (d) of subsection (2); and
 - (b) by the insertion in subsection (2) of the following paragraph:
- "(e) publishing and making known the name and registration number of any vendor."

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997 and section 83 of Act 53 of 1999.

67. Section 8 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the deletion of the word "and" at the end of paragraph (a) of subsection (6);
 - (b) by the addition of the word "and" at the end of paragraph (b) of subsection (6), and
 - (c) by the addition to subsection (6) of the following paragraph:
- "(c) the transfer of all its assets and liabilities by an administrative unit of a local authority that is separately registered under subsection (2) of section 50, to the vendor intended in subsection (1) of that section, shall be deemed not to be a supply."

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 22 of Act 46 of 1996, section 21 of Act 37 of 1996, section 27 of Act 27 of 1997 and section 84 of Act 53 of 1999

68. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended— 5

(a) by the substitution for paragraph (a) of subsection (10) of the following paragraph:

“[(a)] where domestic goods and services are supplied [by a commercial rental establishment] at an all-inclusive charge in any enterprise supplying commercial accommodation for [a] an unbroken period exceeding [45] 28 days, the value of the [portion of the] supply [as relates to that part of the period of the supply as exceeds 45 days] shall [(unless the provisions of paragraph (b) are applicable)] be deemed to be 60 per cent of the value of the supply [for the said part, as determined before applying this paragraph].”: and 10 15

(b) by the deletion of subparagraphs (b) and (c) of subsection (10).

(2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of section 12 of Act 89 of 1991, as amended by section 28 of Act 136 of 1991, section 18 of Act 136 of 1992, section 28 of Act 97 of 1993, section 14 of Act 20 of 1994 and section 22 of Act 37 of 1996 20

69. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended by the addition to paragraph (c) of the following subparagraphs:

“(iii) where an employer operates a hostel or boarding establishment mainly for the benefit of the employees otherwise than for the purpose of making profit; or (iv) where a local authority operates a hostel or boarding establishment otherwise than for the purpose of making profit.”. 25

(2) Subsection (1) shall come into operation on 1 October 2001.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997 and section 86 of Act 53 of 1999 30

70. Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (5) for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:

“The Commissioner [and the postal company] may make such arrangements as [they] the Commissioner may deem necessary— 35

(a) for the collection (in such manner as [they] the Commissioner may determine) by—

(i) any officer performing his or her duties under the control, direction or supervision of the Commissioner; or 40

(ii) the postal company on behalf of the Commissioner, of the [value-added] tax payable in terms of this Act in respect of the importation of any goods into the Republic; and”.

Amendment of section 16 of Act 89 of 1991, as amended by section 21 of Act No. 136 of 1992, section 30 of Act No. 97 of 1993, section 16 of Act No. 20 of 1994, section 23 of Act No. 37 of 1996, section 32 of Act No. 27 of 1997, section 91 of Act No. 30 of 1998 and section 87 of Act No. 53 of 1999 45

71. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition to subsection (3) of the following paragraph:

“(k) an amount of input tax as determined by the Commissioner paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the 50

Minister of Agriculture and Land Affairs to compensate that supplier for tax incurred in the production of such goods:"; and

- (b) by the substitution for the first proviso to subsection (3) of the following proviso:

"Provided that where any vendor is entitled under the preceding provisions of this subsection to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to [any] a later tax period which ends no later than five years after the end of the tax period during which the vendor for the first time became entitled to such deduction and to the extent that it has not previously been deducted by the vendor under this subsection:"

- (2) Subsection (1)(b) shall be deemed to have come into operation on 22 June 2001.

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996 and section 102 of Act 53 of 1999.

72. Section 58 of the Value-Added Tax, 1991, is hereby amended by the substitution for paragraph (l) of the following paragraph:

"(l) being a registered vendor, fails to provide [another registered vendor] a recipient with a tax invoice, credit note or debit note as required by this Act:"

Amendment of Item 2 and Item 15 of Schedule 2 to Act 89 of 1991, as amended by section 49 of Act 136 of 1991, section 44 of Act 136 of 1992, section 45 of Act 97 of 1993, section 33 of Act 20 of 1994 and section 104 of Act 30 of 1998.

73. Schedule 2 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in Part B for Items 2 and 15 of the following items:

"Item 2 Maize meal graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal, not further processed other than by the addition of minerals and vitamins not exceeding one per cent by mass of the final product, solely for the purpose of increasing the nutritional value";

"Item 15 Milk, including high-fat, full-fat, low-fat or fat-free milk, being the milk of cattle, sheep or goats that has not been concentrated, condensed, evaporated, sweetened, flavoured, cultured or subjected to any other process other than homogenization or preservation by pasteurization, ultra-high temperature treatment, sterilization, chilling or freezing or the addition of minerals, vitamins, enzymes and other similar additives not exceeding one per cent by volume of the final product, solely for the purpose of increasing the nutritional value."

Amendment of section 5 of Act 56 of 1996

74. Section 5 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996), is hereby amended by the addition of the following subsection:

"(3) The Chief Executive Officer shall from time to time withdraw money from the Fund for repayment to the Commissioner for the South African Revenue Service of amounts of fuel levy in respect of diesel refunded by the Commissioner and recoverable from the Fund in accordance with the provisions of section 75(1A) and (1B), respectively, of the Customs and Excise Act, 1964 (Act No. 91 of 1964).".

Amendment of section 6 of Act 31 of 1998

75. Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution for subparagraph (iii) of paragraph (b) of subsection (1) of the following subparagraph:

- “(iii) if the securities are interest bearing debentures (including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not) listed by any stock exchange or by any financial exchange as defined in the Financial Markets Control Act, 1989 (Act No. 55 of 1989);”.

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Amendment of section 6 of Act 9 of 1999

76. Section 6 of the Skills Development Levies Act, 1999, is hereby amended by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

- “The Commissioner must, before the seventh day of each month, or such longer period as the Commissioner and Director-General may agree, notify the Director-General of—”.

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Insertion of section 20A in Act 9 of 1999

77. The following section is hereby inserted in the Skills Development Levies Act, 1999, after section 20:

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“Jurisdiction of Courts

20A. A person charged with an offence under this Act may, notwithstanding anything to the contrary in any law, be tried in respect of that offence by any court having jurisdiction within any area in which that person resides or carries on business.”.

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Amendment of section 21 of Act 30 of 2000

78. (1) Section 21 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

- “(d) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

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

- (i) pension fund, provident fund, retirement annuity fund;
(ii) benefit fund; or

- (iii) [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

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- (iv) 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

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(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.”.

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(2) Subsection (1) shall come into operation on the date that section 21 of the Taxation Laws Amendment Act, 2000 (Act No. 30 of 2000), comes into operation.

Amendment of section 7 of Act 5 of 2001

79. Section 7 of the Taxation Laws Amendment Act, 2001, is hereby amended by the deletion of paragraph (d) of subsection (1).

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Short title and commencement

80. (1) This Act shall be called the Revenue Laws Amendment Act, 2001.

(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

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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 2002.

SCHEDULE 1**RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 2002 AND 30 JUNE 2002, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2002**

(Section 2)

1. The rates of normal tax referred to in section 2 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 R38 000	18 per cent of each R1 of the taxable income;
Exceeds R38 000 but does not exceed R55 000	R6 840 plus 26 per cent of the amount by which the taxable income exceeds R38 000;
" R55 000 " " " " R80 000	R11 260 plus 32 per cent of the amount by which the taxable income exceeds R55 000;
" R80 000 " " " " R100 000	R19 260 plus 37 per cent of the amount by which the taxable income exceeds R80 000;
" R100 000 " " " " R215 000	R26 660 plus 40 per cent of the amount by which the taxable income exceeds R100 000;
" R215 000	R72 660 plus 42 per cent of the amount by which the taxable income exceeds R215 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 2 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 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—

- (a) "small business corporation" means any close corporation or any company registered 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—
- (i) the gross income for the year of assessment does not exceed R1 million;

- (ii) 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);
- (iii) 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; and
- (iv) such company is not an employment company;
- (b) "employment company" means any company—
 - (i) which is a labour broker as defined in the Fourth Schedule to the Income Tax Act, 1962, 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
 - (ii) which is a personal service company as defined in the said Fourth Schedule;
- (c) "investment income" means—
 - (i) any income in the form of dividends, royalties, rental, annuities or income of a similar nature;
 - (ii) any interest as contemplated in section 24J of the Income Tax Act, 1962, any amount contemplated in section 24K of the said Act and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and
 - (iii) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;
- (d) "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; 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

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

(SECTION 52)

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	34.7c/kg	34.7c/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)	6c/l	6c/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)	6c/l	6c/l

Act No. 19, 2001

REVENUE LAWS AMENDMENT ACT, 2001

TARIFF ITEM	TARIFF HEADING	DESCRIPTION	RATE OF DUTY	
			EXCISE	CUSTOMS
.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)	6c/l	6c/l
104.10	22.03	BEER MADE FROM MALT	2373c/l of absolute alcohol	2373c/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)	7.82c/l	7.82c/l
.10		Unfortified still wine	74.7c/l	74.7c/l
.40		Fortified still wine	169c/l	169c/l
.50		Other still fermented beverages, unfortified	120.8c/l	120.8c/l
.60		Other still fermented beverages, fortified	214.3c/l	214.3c/l
.70		Sparkling wine	206.9c/l	206.9c/l
.80		Other fermented beverages (excluding sorghum beer)	254.8c/l	254.8c/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	3337c/l of absolute alcohol	—
.15		Spirits, manufactured in the Republic by the distillation of any sugar cane product	3337c/l of absolute alcohol	—
.25		Spirits, manufactured in the Republic by the distillation of any grain product	3337c/l of absolute alcohol	—
.29		Other spirits, manufactured in the Republic	3337c/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 compound alcoholic preparations of an alcoholic strength exceeding 1,713 per cent alcohol by volume	—	3241c/l of absolute alcohol or 1394c/l

Act No. 19, 2001

REVENUE LAWS AMENDMENT ACT, 2001

TARIFF ITEM	TARIFF HEADING	DESCRIPTION	RATE OF DUTY	
			EXCISE	CUSTOMS
.70		Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances	—	3241c/l of absolute alcohol
104.30	24.02	CIGARS, CHEROOTS, CIGARILLOS AND CIGARETTES, OF TOBACCO OR TOBACCO SUBSTITUTES		
.10		Cigars	66 420c/kg net	66 420c/kg net
.20		Cigarettes	158.4c/10 cigarettes	158.4c/10 cigarettes
104.35	24.03	OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES 'HOMOGENISED' OR 'RECONSTITUTED' TOBACCO EXTRACTS AND ESSENCES:		
.10		Cigarette tobacco	7167c/kg	7167c/kg
.20		Pipe tobacco	4677c/kg net	4677c/kg net''.