

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 45—98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP BELASTINGWETTE

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 45—98]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Marketable Securities Tax Act, 1948, so as to withdraw an exemption; to further regulate the payment of penalties; to make provision for the payment of interest; to further regulate the making of refunds; to effect certain textual amendments; and to provide for the publication of names of offenders; to amend the Transfer Duty Act, 1949, so as to further regulate the payment of transfer duty; to effect certain textual amendments; to further regulate the making of refunds; and to provide for the publication of names of offenders; to amend the Estate Duty Act, 1955, so as to further regulate the payment of estate duty; to effect certain textual amendments; and to provide for the publication of names of offenders; 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 1999 and 30 June 1999, and by companies in respect of taxable incomes for the years of assessment ending during the period of 12 months ending on 31 March 1999; to further define certain expressions; to make certain decisions of the Commissioner subject to objection and appeal; to adjust the secrecy provisions; to increase certain tax rebates; to further regulate the receipt and accrual of income from certain funds; to further regulate the taxation of allowances or advances in respect of transport expenses; to further regulate the circumstances in which amounts are deemed to have accrued from a source within the Republic; to further regulate the circumstances in which amounts received or accrued in relation to the disposal of listed shares are deemed to be of a capital nature; to further regulate the taxation of investment income from foreign sources; to further regulate the taxation of investment income of controlled foreign entities and investment income arising from donations, settlements or other dispositions; to further regulate the application of certain exemptions; to withdraw certain exemptions and to introduce another; to further regulate certain general deductions allowed in the determination of taxable income; to repeal the deduction in respect of expenses incurred by medical practitioners and dentists on courses or congresses outside the Republic; to deem certain dividends received by or accrued to a shareholder to be income derived otherwise than in the form of dividends; to further regulate the limitation of allowances granted to lessors of certain assets; to further regulate the taxation of gains and losses on foreign exchange transactions; to further regulate the taxation of the income of trusts and beneficiaries of trusts; to further regulate the determination of the taxable income of certain persons in respect of international transactions; to effect certain textual amendments; to introduce an exemption from donations tax; to further regulate the determination of amounts distributed which are deemed to be dividends for purposes of the Secondary Tax on Companies; to further regulate the furnishing of information; to provide for the publication of names of offenders; to delete certain obsolete provisions; to further regulate the making of refunds; to make certain general anti-avoidance provisions also applicable to trusts; to empower the Minister of Finance to make regulations prescribing the contents of certain accounts; to further regulate the computation of gross income derived by way of lump sum benefits from certain pension, provident and retirement annuity funds; to further regulate the deduction or withholding of amounts by employers in respect of

normal tax; and to extend the provisions in relation to, and to further regulate, the determination of benefits and advantages derived by reason of employment; to amend the Customs and Excise Act, 1964, so as to further define certain expressions; to adjust the secrecy provisions; to effect certain consequential and textual amendments; to introduce special measures to regulate the payment of duty on marked goods; to further regulate the conclusion of certain international agreements; to regulate the disclosure of information and the rendering of mutual assistance in terms of a convention or agreement; to further regulate the making of refunds; to criminalise certain conduct; to provide for the publication of names of offenders; to further regulate the circumstances in which rewards may be made; to further regulate the liability of an agent for obligations imposed on such agent's principal; to further regulate the prohibition and restriction on the importation of certain goods; and to provide for the continuation of certain amendments to the Schedules to the Customs and Excise Act, 1964; to amend the Stamp Duties Act, 1968, so as to further define certain expressions; to introduce certain exemptions; to further regulate the payment of stamp duty; to further regulate the making of refunds; to provide for the publication of names of offenders; and to withdraw certain exemptions; to amend the Value-Added Tax Act, 1991, so as to further define certain expressions; to exclude certain activities from the scope of the exemption for financial services; to allow the Commissioner to make certain information regarding vendors known; to limit the application of the zero rate in respect of the supply of services to non-residents; to limit the application of the payments basis of accounting for tax and to introduce a transitional arrangement in that regard; to limit the period during which input tax may be deducted to five years and to introduce a scheme for determining the tax liability; to provide that any basis for apportioning input tax be approved by the Commissioner and that the basis so approved may only be changed from a future tax period; to make further provision in respect of adjustments of input tax; to further regulate the particulars to be reflected on tax invoices; to further regulate the circumstances in which the Commissioner should be advised of a change of status; to provide for certain decisions of the Commissioner to be subject to objection and appeal; to limit the circumstances in which a vendor is protected from the withdrawal of a ruling; to prohibit the backdating of claims for refunds and to further provide for amounts due by vendors to be set off against refunds; to further regulate the determination of the period of 21 days within which a refund must be made; to further regulate the publication of names of offenders; and to effect certain textual amendments; to amend the Income Tax Act, 1993, so as to effect a textual amendment to the unbundling provisions; to amend the Income Tax Act, 1996, so as to effect a textual amendment; and to amend the Tax on Retirement Funds Act, 1996, so as to increase the rate of tax; and to provide for matters connected therewith.

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

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

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

(2) Subsection (1) shall be deemed to have come into operation on 26 June 1998 and shall apply in respect of any purchase of marketable securities on or after that date. 10

Substitution of section 5 of Act 32 of 1948, as substituted by section 3 of Act 103 of 1969 and amended by section 2 of Act 87 of 1982

2. The following section is hereby substituted for section 5 of the Marketable Securities Tax Act, 1948:

“Penalty on late payments 15

5. If any tax remains unpaid at the expiration of the period of 14 days or the further period within which payment thereof is in terms of section 4(1) required to be made, a penalty [at the rate] of 10 per cent [per annum, calculated from the last day of the said period or further period, as the case may be, to the date of payment] of the amount of such unpaid tax shall be payable [on the amount which so remains unpaid]: Provided that [where the last day of the said period or further period, as the case may be, is a date before 1 July 1982, such penalty shall be calculated up to 30 June 1982 at the rate of 12 per cent per annum] the Commissioner may, having regard to the circumstances of the case, remit the penalty imposed under this section or any part thereof.”. 20 25

Insertion of section 5A in Act 32 of 1948

3. (1) The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 5:

“Interest on late payments 30

5A. If any tax is not paid in full within the period for payment prescribed by section 4, interest shall be paid at the prescribed rate as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), on the balance of tax outstanding reckoned from the last date for payment contemplated in section 4 to the date of payment to the Commissioner.”. 35

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any unpaid tax on or after that date.

Substitution of section 7 of Act 32 of 1948, as amended by section 4 of Act 114 of 1977

4. The following section is hereby substituted for section 7 of the Marketable Securities Tax Act, 1948: 40

“Refunds and set-off

7. (1) Subject to the provisions of subsection (2), the Commissioner may, if he is satisfied that any purchase of marketable securities has been cancelled, or has been set aside or declared void by any court of law, refund any tax which may have been paid in respect of the purchase of those securities. 45

(2) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.” 5

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

5. Section 9 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for the definition of “judge” in subsection (1) of the following definition: 10
“ ‘judge’ means a judge of the [Supreme] High Court and includes a judge in chambers;”.

Amendment of section 9D of Act 32 of 1948, as inserted by section 2 of Act 46 of 1996 15

6. Section 9D of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for the words “Supreme Court” in paragraph (a) of subsection (9) of the words “High Court”.

Insertion of section 11 in Act 32 of 1948

7. (1) The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 10: 20

“Publication of names of offenders

11. (1) The Commissioner may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of any offence in terms of— 25

- (a) section 10;
- (b) the common law, where the criminal conduct corresponds materially with the offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor. 30

(2) Every such list may specify—
(a) the name and address of the offender;
(b) such particulars of the offence as the Commissioner may think fit;
(c) the particulars of the fine or sentence imposed.” 35

(2) Subsection (1) shall be deemed to have come into operation on 11 March 1998 and shall apply in respect of any person convicted on or after that date. 35

Amendment of section 6 of Act 40 of 1949

8. (1) Section 6 of the Transfer Duty Act, 1949, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) any commission or fees paid or payable in respect of the property by the person who acquired [such] the property **[in excess of five per centum of the amount of the consideration payable in respect of the property]**: Provided that where the property is acquired by way of a sale in execution, the amount to be added to the consideration in terms of this paragraph shall be so much of any commission or fees paid or payable by the person who acquired the property, as exceeds five per cent of the consideration payable in respect of the property;” 40 45

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any property acquired on or after that date.

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

9. Section 11A of the Transfer Duty Act, 1949, is hereby amended by the substitution for the definition of “judge” in subsection (1) of the following definition:

“ ‘judge’ means a judge of the [Supreme] High Court and includes a judge in chambers;”.

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

10. Section 11E of the Transfer Duty Act, 1949, is hereby amended—

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

“For the purposes of the administration of this Act, a judge may on [*ex parte*] application by the Commissioner or any officer contemplated in section 11A(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—”; and

(b) by the substitution for the words “Supreme Court” in paragraph (a) of subsection (9) of the words “High Court”.

Substitution of section 20 of Act 40 of 1949

11. The following section is hereby substituted for section 20 of the Transfer Duty Act, 1949:

“Refunds and set-off

20. (1) If it is proved to the satisfaction of the Commissioner that duty has been paid in respect of an acquisition of property by a person who is or has become, in terms of this Act or any other law as in force on the date of the acquisition, exempt from the payment of duty in respect of that acquisition, or that the amount of duty which has been paid is in excess of the amount payable, he may, subject to the provisions of subsection (2), authorize a refund of the duty paid or of so much of the duty as has been overpaid, as the case may be.

(2) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.”.

Insertion of section 20A in Act 40 of 1949

12. (1) The following section is hereby inserted in the Transfer Duty Act, 1949, after section 20:

“Publication of names of offenders

20A. (1) The Commissioner may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of any offence in terms of—

(a) section 15 or 17;

(b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.

(2) Every such list may specify—

- (a) the name and address of the offender;
- (b) such particulars of the offence as the Commissioner may think fit;
- (c) the particulars of the fine or sentence imposed.”.

(2) Subsection (1) shall be deemed to have come into operation on 11 March 1998 and shall apply in respect of any person convicted on or after that date.

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

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13. Section 3 of the Estate Duty Act, 1955, is hereby amended by the substitution for paragraph (a)bis of subsection (3) of the following paragraph:

“(a)bis so much of any benefit which is due and payable by, or in consequence of membership or past membership of, any fund on or as a result of the death of the deceased as exceeds the aggregate amount of any contributions or consideration proved to the satisfaction of the Commissioner to have been paid by the beneficiary, together with interest at six per cent per annum calculated upon such contributions or consideration from the date of payment to the date of death: Provided that—

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- (i) this paragraph shall not apply in respect of any annuity provided by or in consequence of membership or past membership of a pension fund, a provident fund or a retirement annuity fund as respectively defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

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- (ii) this paragraph shall apply in respect of the commutation of any annuity which on or after the date of the death of the deceased is provided or may be provided by or in consequence of membership or past membership of a fund referred to in paragraph (i) of this proviso, and that for the purposes of this paragraph any amount payable by way of such a commutation shall be deemed to be a benefit which is due and payable as aforesaid;”.

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

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

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- “(ii) no deduction in respect of the value of such interest or right was [allowed] allowable in the determination of the net value of the estate of the predeceased spouse under the provisions of paragraph (q) of this section;”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the estate of any person who dies on or after that date.

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

15. Section 8A of the Estate Duty Act, 1955, is hereby amended by the substitution for the definition of “judge” in subsection (1) of the following definition:

“‘judge’ means a judge of the [Supreme] High Court and includes a judge in chambers;”.

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

16. Section 8E of the Estate Duty Act, 1955, is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words: 5
“For the purposes of the administration of this Act, a judge may on [*ex parte*] application by the Commissioner or any officer contemplated in section 8A(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—”; and
- (b) by the substitution for the words “Supreme Court” in paragraph (a) of subsection (9) of the words “High Court”. 10

Insertion of section 28A in Act 45 of 1955

17. (1) The following section is hereby inserted in the Estate Duty Act, 1955, after section 28:

“Publication of names of offenders” 15

28A. (1) The Commissioner may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of any offence in terms of—

- (a) section 28;
- (b) the common law, where the criminal conduct corresponds materially with the offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor. 20
- (2) Every such list may specify— 25
 - (a) the name and address of the offender;
 - (b) such particulars of the offence as the Commissioner may think fit;
 - (c) the particulars of the fine or sentence imposed.”.

(2) Subsection (1) shall be deemed to have come into operation on 11 March 1998 and shall apply in respect of any person convicted on or after that date.

Fixing of rates of normal tax in terms of Act 58 of 1962 30

18. 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 1999 or 30 June 1999; and
- (b) the taxable income of any company for any year of assessment ending during 35
the period of 12 months ending on 31 March 1999,

shall be as set forth 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, 40 45 50

**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 and section 2 of Act 28 of 1997**

- 19.** (1) Section 1 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for paragraph (c) of the definition of “benefit fund” of the following paragraph: 5
 - “(c) any fund (other than a pension fund, provident fund or retirement annuity fund) [**which, in respect of the year of assessment in question**], where the Commissioner [**is satisfied is**]—
 - (i) was prior to 11 March 1998 satisfied that such fund constituted; and
 - (ii) is in respect of the year of assessment in question satisfied, that such fund constitutes, 10
 - a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for such a purpose and also for the purpose of providing benefits for the dependants or nominees of deceased members;”;
 - (b) by the deletion of paragraph (c) of the definition of “benefit fund”; 15
 - (c) by the insertion of the following paragraph after paragraph (b) of the definition of “connected person”:
 - “(bA) in relation to a connected person in relation to a trust (other than a unit trust scheme in property shares as authorised under the Unit Trust Control Act, 1981 (Act No. 54 of 1981)), includes any other person who is a connected person in relation to such trust;”; 20
 - (d) by the substitution for subparagraph (vA) of paragraph (d) of the definition of “connected person” of the following subparagraph:
 - “(vA) any other company if such other company is managed or controlled by— 25
 - (aa) any person who or which is a connected person in relation to such company; or
 - (bb) any person who or which is a connected person in relation to a person contemplated in item (aa); and”; 30
 - (e) by the substitution for the words preceding subparagraph (i) of paragraph (e) of the definition of “gross income” of the following words:
 - “any amount determined in accordance with the provisions of the Second Schedule in respect of lump sum benefits received by or accrued to such person from or in consequence of his membership or past membership of—”; 35
 - (f) by the substitution in the definition of “gross income” for the words following upon subparagraph (ii) and preceding the proviso to paragraph (e) of the following words:
 - “if such person was a member or past member of such fund during any such year.”; 40
 - (g) by the substitution for the words preceding subparagraph (i) of paragraph (eA) of the definition of “gross income” of the following words:
 - “where, in relation to a member who effectively remains in the employment of the same employer, or the dependants or nominees of a deceased member—”;
 - (h) by the addition of the word “or” at the end of subparagraph (ii) of paragraph (eA) of the definition of “gross income”; 45
 - (i) by the addition to paragraph (eA) of the definition of “gross income” of the following subparagraph:
 - “(iii) any amount in a fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’ has become payable to the member or is being utilised to redeem a debt,”; 50
 - (j) by the addition of the word “or” at the end of subparagraph (bb) of paragraph (eA) of the definition of “gross income”; 55
 - (k) by the addition to paragraph (eA) of the definition of “gross income” of the following item:
 - “(cc) in the case of an amount becoming payable to a member or being utilised to redeem a debt, of the amount so payable or so utilised.”; 60
 - (l) by the substitution for subparagraph (xii) of paragraph (b) of the definition of “retirement annuity fund” of the following subparagraph:

“(xii) that save—

(aa) as is contemplated in subparagraph (ii); or

(bb) for the transfer of any member’s total interest in any approved retirement annuity fund into another approved retirement annuity fund prior to the member becoming entitled to the payment of an annuity,

no member’s rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;”;

(m) by the substitution for the definition of “tax” or “the tax” or “taxation” of the following definition:

“ ‘tax’ or ‘the tax’ or ‘taxation’ means any levy or tax leviable under this Act and for the purposes of Part IV of Chapter III includes any levy or tax leviable under any previous Income Tax Act **[or any tax on persons or the incomes of persons leviable under any ordinance of a provincial council];**”;

(n) by the substitution for the definition of “taxpayer” of the following definition:

“ ‘taxpayer’ means any person chargeable with any tax leviable under this Act and, for the purposes of any provision relating to any return, includes every person required by this Act to furnish such return; and for the purposes of Part IV of Chapter III includes any person chargeable with any tax leviable under any previous Income Tax Act **[or any tax on persons or the incomes of persons leviable under any ordinance of a provincial council];**”.

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 11 March 1998.

(b) Subsection (1)(b) shall come into operation on 1 January 2000 and shall apply in respect of years of assessment commencing on or after that date.

(c) Subsection (1)(g) to (k), inclusive, shall come into operation on the date of promulgation of this Act.

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 and section 3 of Act 21 of 1995

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

“(4) Any decision by the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’ and ‘retirement annuity fund’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9C, section 9D, section 10(1)(cB), (cH), (cI), (cJ), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 13, section 14, section 15, **[section 16A]** section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, 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 and paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule, shall be subject to objection and appeal.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any decision communicated to the taxpayer or the person concerned on or after that date.

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996 and section 34 of Act 34 of 1997

21. Section 4 of the Income Tax Act, 1962, is hereby amended—

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

“(b) the Auditor-General shall in the performance of his duties in terms of section **[5]** 3 of the Auditor-General Act, **[1989 (Act No. 52 of 1989)]** 1995 (Act No. 12 of 1995), have access to documents in the possession or custody of the Commissioner;”;

- (b) by the addition to the proviso to subsection (1) of the following paragraph:
“(c) the provisions of this subsection not be construed as preventing the
Commissioner from disclosing to the Chief of the Central Statistical
Services such information in relation to any person as may be required by
such Chief in connection with the collection of statistics in complying
with the provisions of the Statistics Act, 1976 (Act No. 66 of 1976), or
any regulation thereunder.”; and 5
- (c) by the insertion after subsection (1) of the following subsection:
“(1A) The Chief of the Central Statistical Services or any person acting
under the direction and control of such Chief, shall not disclose any
information supplied under subsection (1)(c) to any person or permit any
person to have access thereto, except in the exercise of his powers or the
carrying out of his duties to publish statistics in any anonymous form.”. 10

**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 15**
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 and section 3 of Act 28 of 1997

- 22. Section 6 of the Income Tax Act, 1962, is hereby amended—** 20
- (a) by the substitution for the expression “R3 215” in paragraph (a) of subsection
(2) of the expression “R3 515”; and
- (b) by the substitution for the expression “R2 500” in paragraph (b) of subsection
(2) of the expression “R2 660”.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 25
1962, section 8 of Act 88 of 1965, section 9 of Act 55 of 1966, section 7 of Act 94 of
1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of
1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141
of 1992 and section 6 of Act 21 of 1995

- 23. (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution 30**
for paragraph (a) of subsection (2C) of the following paragraph:
“(a) any benefit paid or payable to a spouse in his capacity as a member or past
member of a pension fund, provident fund, benefit fund, [or] retirement
annuity fund or any other fund of a similar nature shall be deemed to be
income derived by such spouse from a trade carried on by him;”. 35
- (2) Subsection (1) shall come into operation on 1 January 1999 and shall apply in
respect of years of assessment commencing on or after that date.

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 40
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 45
of 1996 and section 6 of Act 28 of 1997

- 24. (1) Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution**
for paragraph (cc) of the second proviso to subparagraph (ii) of paragraph (b) of
subsection (1) of the following paragraph:
- “(cc) where the recipient has during the whole or any portion of the year of 50
assessment interchangeably used more than one vehicle for business
purposes [and one or more of such vehicles were not used primarily

for business purposes], the provisions of paragraphs (aa) and (bb) of this proviso shall be applied separately to each such vehicle [which was not used primarily for business purposes];”.

(2) Subsection (1) shall come into operation on 1 March 1999 and shall apply in respect of years of assessment ending on or after that date.

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Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993, section 7 of Act 21 of 1994, section 9 of Act 21 of 1995 and section 7 of Act 28 of 1997

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

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

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“(i) any services rendered by such person to or work or labour done by such person for or on behalf of the Government, including [the Railway Administration and] any provincial administration, or any local authority in the Republic or the South African Tourist Corporation or the Council for Scientific and Industrial Research, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the Government or such administration or local authority or that Corporation or that Council; or”; and

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(b) by the addition of the following subsections:

“(6) Any interest as defined in section 24J shall for the purposes of this Act be deemed to have been received or accrued from a source within the Republic, where such interest was derived from the utilisation or application in the Republic by any person of any funds or credit obtained in terms of any form of interest-bearing arrangement.

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(7) For the purposes of subsection (6) the place of utilisation or application shall, until the contrary is proved, be deemed to be, in the case where such funds are or credit is utilised or applied by—

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(a) a natural person, the place where such person is ordinarily resident; or

(b) a person other than a natural person, its place of effective management.”.

(2) Subsection (1)(b) shall be deemed to have come into operation on 1 July 1998 and shall apply in respect of any interest received or accrued on or after that date.

Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991, section 9 of Act 141 of 1992, section 6 of Act 113 of 1993 and section 7 of Act 36 of 1996

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26. Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) For the purposes of this section any amount included in the income of any company in terms of the provisions of [the second proviso to] section 22(8)(b) as a result of the application, disposal or distribution of any affected share as contemplated in that section, shall be deemed to be an amount which has accrued to such company as a result of the disposal of such affected share.”.

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Amendment of section 9C of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997

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

(a) by the insertion after subsection (2) of the following subsection:

“(2A) Notwithstanding the provisions of subsection (2), where it is established to the satisfaction of the Commissioner that the investment income, or any portion thereof, received or accrued during any year of assessment may not be remitted to the Republic during such year of assessment as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the investment income was received or accrued, such investment income or any portion thereof shall be deemed to have been received or accrued from a source within the Republic during the year of assessment during which such investment income or portion thereof may be so remitted to the Republic.”; and

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

“(a) arising from and effectively connected to the business activities of a substantive business enterprise conducted by such resident through a permanent establishment of such resident in any country other than the Republic, where such permanent establishment is suitably equipped for conducting the principal business of such substantive business enterprise; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1997.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997

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

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

“(b) who is a resident and to [whom] which investment income the provisions of section 7(3), (4), (5), (6) or (7) would have applied by reason or in consequence of such donation, settlement or other disposition, had such income been received or accrued from a source within the Republic.”;

(b) by the insertion after subsection (4) of the following subsection:

“(4A) Notwithstanding the provisions of subsections (2), (3) and (4), where it is established to the satisfaction of the Commissioner that the investment income or any portion thereof received or accrued during any year of assessment, which is to be included in the income of any resident in terms of such subsections, may not be remitted to the Republic during such year of assessment as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the investment income was received or accrued, such investment income or any portion thereof shall be included in the income of such resident in the year of assessment during which such investment income or portion thereof may be so remitted to the Republic.”;

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

“(b) any amount whereby such deductions or allowances exceed the amount of such investment income, shall be carried forward [to the immediately succeeding year of assessment and shall be allowed as a deduction in such succeeding year of assessment] and be deemed to be a deduction or allowance which may be made in the determination of the taxable income of such resident during the immediately succeeding year of assessment if such controlled foreign entity carries on such trade during such succeeding year of assessment.”;

(d) by the substitution for the proviso to paragraph (a) of subsection (9) of the following proviso:

“Provided that for the purposes of the determination of the tax payable in the Republic on such proportional amount, such tax shall be an amount which bears to the total normal tax payable the same ratio as the taxable income attributable to the inclusion of such proportional amount bears to the total taxable income in relation to such resident.”;

(e) by the substitution for paragraph (b) of subsection (9) of the following paragraph:

“(b) where the investment income arises from and is effectively connected to the business activities of a substantive business enterprise of any controlled foreign entity conducted through a permanent establishment

as defined in section 9C(1) of such controlled foreign entity, in any country other than the Republic, where such permanent establishment is suitably equipped for conducting the principal business of such substantive business enterprise;”;

- (f) by the deletion of the word “or” at the end of paragraph (c) of subsection (9); 5
- (g) by the addition of the word “or” at the end of paragraph (d) of subsection (9);
- and
- (h) by the addition to subsection (9) of the following paragraph:
 - “(e) to investment income of any controlled foreign entity which is—
 - (i) deemed to have accrued to the entity from a source in the Republic in terms of section 9(1)(b) or (bA); or
 - (ii) included in the taxable income of the entity.”. 10

(2)(a) Subsection (1)(a), (b), (c), (e), (f), (g) and (h) shall be deemed to have come into operation on 1 July 1997.

(b) Subsection (1)(d) shall be deemed to have come into operation on 1 July 1998 and shall apply in respect of years of assessment commencing on or after that date. 15

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 and section 10 of Act 28 of 1997 20 25 30

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

- (a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:
 - “(f) the receipts and accruals of all religious, charitable and educational institutions of a public character, which carry on religious, charitable or educational activities, as the case may be, in the Republic, whether or not supported wholly or partly by grants from public revenue;”;
- (b) by the substitution for paragraph (gA) of subsection (1) of the following paragraph:
 - “(gA) any disability pension paid under section 2 of the Social [Pensions Act, 1973 (Act No. 37 of 1973)] Assistance Act, 1992 (Act No. 59 of 1992);”;
- (c) by the deletion of subparagraph (iii) of paragraph (t) of subsection (1);
- (d) by the insertion after paragraph (t) of subsection (1) of the following paragraph:
 - “(tA) the receipts and accruals of any company which qualifies for exemption under section 2 of the Company Tax Amendment Decree, 1994 (Decree No. 2 of 1994 of Ciskei), which are derived from a source within the territory of the former Republic of Ciskei;”;
- (e) by the deletion of paragraph (w) of subsection (1). 35 40 45 50

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 11 March 1998.

(b) Subsection (1)(c) shall be deemed to have come into operation on 26 June 1998.

(c) Subsection (1)(d) shall be deemed to have come into operation on 1 April 1998 and shall apply in respect of years of assessment ending on or after that date. 55

(d) Subsection (1)(e) shall be deemed to have come into operation on 1 July 1998 and shall apply in respect of all interest received or accrued on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 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 and section 12 of Act 28 of 1997

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

(a) by the substitution for the proviso to subparagraph (i) of paragraph (k) of the following proviso: 15

“Provided that the total deduction to be allowed in respect of the total contributions by such person to any one or more pension fund or funds [referred to in paragraph (c) of the definition of ‘pension fund’ in section 1] shall not in the year of assessment exceed the greater of R1 750 or 7,5 per cent of the remuneration (being the income or part thereof referred to in the definition of ‘retirement-funding employment’ in section 1) derived by such person during such year in respect of his retirement-funding employment;” and 20

(b) by the substitution for the words preceding the proviso to paragraph (l) of the following words: 25

“any sum contributed by an employer during the year of assessment for the benefit of his employees to any pension fund, provident fund or benefit fund (other than a fund contemplated in paragraph (a) of the definition of ‘benefit fund’):” 30

(2) Subsection (1) shall come into operation on 1 March 1999 and shall apply in respect of any sum contributed on or after that date.

Amendment of section 11sex of Act 58 of 1962, as inserted by section 10 of Act 90 of 1972 and amended by section 11 of Act 65 of 1973

31. Section 11sex of the Income Tax Act, 1962, is hereby amended by the substitution for the words and paragraph preceding paragraph (b) of the following words and paragraph: 35

“For the purpose of determining the taxable income derived by any taxpayer from carrying on any trade within the Republic, there shall be allowed as a deduction from the income of the taxpayer so derived the amount of any compensation due to [the Railway Administration] Transnet Limited and paid by the taxpayer (whether directly or through any trade association of which the taxpayer is a member) in respect of any loss incurred by [that Administration] Transnet Limited in operating any railway line, if— 40

(a) such railway line was constructed under or in pursuance of a written agreement with [the said Administration] Transnet Limited in terms of which [the Administration] Transnet Limited undertook to operate the railway line;” 45

Repeal of section 16A of Act 58 of 1962, as inserted by section 10 of Act 70 of 1989 and amended by section 10 of Act 36 of 1996 50

32. (1) Section 16A of the Income Tax Act, 1962, is hereby repealed.

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

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

33. Section 19 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5B) of the following subsection:

“(5B) So much of any dividend received by or accrued to any shareholder in relation to a unit portfolio referred to in paragraph (e) of the definition of ‘company’ in section 1 as has been distributed out of—

- (a) interest derived by such unit portfolio and which is exempt from tax in the hands of such unit portfolio under the provisions of section 10(1)(iA); or
- (b) any dividend derived by such unit portfolio which is a dividend referred to in section 11(s),

shall for the purposes of this section, be deemed to be income derived by such shareholder otherwise than in the form of dividends.”.

Amendment of section 23A of Act 58 of 1962, as inserted by section 21 of Act 121 of 1984 and substituted by section 12 of Act 70 of 1989 and amended by section 22 of Act 101 of 1990 and section 24 of Act 129 of 1991

34. Section 23A of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the definition of “affected asset” in subsection (1) of the following paragraph:

- “(b) any machinery, plant, implement, utensil, [or] article, aircraft or ship which has been let and in respect of which the lessor is or was entitled to an allowance under section 12B or 12C, whether in the current or a previous year of assessment, other than any such machinery, plant, implement, utensil, [or] article, aircraft or ship let by him under an agreement of lease formally and finally signed by every party to the agreement before 19 November 1988,”.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996 and section 18 of Act 28 of 1997

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

- (a) by the substitution for the words preceding paragraph (a) of the definition of “affected forward exchange contract” in subsection (1) of the following words:

“ ‘affected [forward exchange] contract’ means any foreign currency option contract or forward exchange contract, as the case may be, which has been entered into by any person during any year of assessment, to serve as a hedge in respect of a loan, advance or debt, where—”;

- (b) by the substitution for subparagraph (ii) of paragraph (b) of the definition of “ruling exchange rate” in subsection (1) of the following subparagraph:

“(ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract, or in the case where the forward rate in terms of such forward exchange contract has been used to translate a loan, advance or debt as contemplated in paragraph (a)(ii), the forward rate in terms of such contract, or in respect of a forward exchange contract which is an affected [forward exchange] contract, the forward rate in terms of such [affected] forward exchange contract;”;

- (c) by the substitution for subparagraph (ii) of paragraph (c) of the definition of “ruling exchange rate” in subsection (1) of the following subparagraph:

“(ii) the date it is translated—
(aa) in relation to a foreign currency option contract which is not an affected contract, the rate obtained by dividing the market value

- of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract; or
- (bb) in relation to a foreign currency option contract which is an affected contract, the rate obtained by dividing any amount included or deducted, as the case may be, in terms of subsection (4)(a) by the foreign currency amount, as specified in such affected contract;"; and
- (d) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
- “(a) (i) any premium or like consideration received [or receivable] by, or paid [or payable] by, such person in terms of a foreign currency option contract entered into by such person in the course of such trade; or
- (ii) any consideration paid [or payable] by such person in respect of a foreign currency option contract acquired by such person in the course of such trade; and”.
- (2)(a) Subsection (1)(a), (b) and (c) shall come into operation on the date of promulgation of this Act and shall apply in respect of any agreement entered into on or after that date.
- (b) Subsection (1)(d) shall be deemed to have come into operation on 27 May 1998 and shall apply in respect of any agreement entered into on or after that date.

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

- 36.** (1) Section 25B of the Income Tax Act, 1962, is hereby amended by the addition of the following subsections:
- “(4) Notwithstanding the provisions of subsection (3), any deduction or allowance contemplated in that subsection which is deemed to be made in the determination of the taxable income of a beneficiary of a trust during any year of assessment shall be limited to the income which is deemed to be income which has accrued to such beneficiary in terms of subsection (1) during such year of assessment.
- (5) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the income contemplated in that subsection, shall be deemed to be a deduction or allowance which may be made in the determination of the taxable income of the trust during such year of assessment: Provided that the sum of such deductions and allowances shall be limited to the taxable income of such trust during such year of assessment as calculated before allowing any deduction or allowance under this subsection.
- (6) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the sum of the income contemplated in subsection (4) of such beneficiary and the taxable income of such trust contemplated in subsection (5), shall for the purposes of subsection (3) be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by such beneficiary by way of income referred to in subsection (1) during the immediately succeeding year of assessment.”.
- (2) Subsection (1) shall be deemed to have come into operation on 11 March 1998 and shall apply in respect of—
- (a) any new trust created on or after 11 March 1998; and
- (b) any existing trust, with effect from years of assessment commencing on or after 1 January 1999.

Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995

- 37.** (1) Section 31 of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “international agreement” in subsection (1) of the following definition:
- “ ‘international agreement’ means a transaction, operation or scheme entered into between—

- (a) (i) a person who, in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic; and
- [(b)](ii) any other person who, in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic; or 5
- (b) (i) a person who, in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic; and
- (ii) any other person who, in the case of a natural person, is ordinarily resident outside the Republic or in the case of a person other than a natural person, is managed or controlled outside the Republic, 10
for the supply of goods or services to or by a permanent establishment as contemplated in section 9C(1) of either of such persons in the Republic; and”.
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act 15
and shall apply in respect of the supply of goods and services on or after that date.

Amendment of section 37H of Act 58 of 1962, as inserted by section 12 of Act 46 of 1996

38. Section 37H of the Income Tax Act, 1962, is hereby amended by the substitution for the words “Supreme Court” in subsection (23) and paragraph (a) of subsection (25), 20
respectively, of the words “High Court”.

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

39. (1) Section 56 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following paragraph: 30

“(o) where such property consists of the full ownership in immovable property, if—

- (i) such immovable property was acquired by any beneficiary entitled to any grant or services in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997; and 35
- (ii) the Minister of Land Affairs or a person designated by him has, on such terms and conditions as such Minister may in consultation with the Commissioner prescribe, approved the particular project in terms of which such immovable property is so acquired.”. 40

(2) Subsection (1) shall be deemed to have come into operation on 27 April 1994 and shall apply in respect of any donation made on or after that date.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995 and section 22 of Act 36 of 1996 45

40. Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (d) of subsection (4) of the following paragraph:

“(d) to any loan granted—

- (i) which is denominated in the currency of the Republic, in respect of which a rate of interest not less than the ‘official rate of interest’, as defined in paragraph 1 of the Seventh Schedule; or 50

- (ii) which is denominated in a foreign currency, in respect of which a market-related rate of interest,
is payable by the recipient;”.

Amendment of section 69 of Act 58 of 1962

41. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) In addition to the returns specified in subsection (1), every person, whether a taxpayer or not, shall, if required by the Commissioner—

(a) furnish the Commissioner with information reflecting—

(i) the full name and address; and

(ii) in the case of—

(aa) any natural person, his or her identification number: Provided that if he or she is not in possession of a South African identity document, any other form of identification; or

(bb) any person other than a natural person, the registration number, in relation to the amounts received by or accrued to such person as contemplated in subsection (1)(b) to (f), inclusive; and

(b) supply such information and furnish such returns or such further or other returns as the Commissioner may require.”.

Insertion of section 75A in Act 58 of 1962

42. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 75:

“Publication of names of offenders

75A. (1) The Commissioner may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of any offence in terms of—

(a) section 75 or 104, paragraph 11A(7) or 30 of the Fourth Schedule or paragraph 19 of the Seventh Schedule;

(b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.

(2) Every such list may specify—

(a) the name and address of the offender;

(b) such particulars of the offence as the Commissioner may think fit;

(c) the year of assessment or tax period during which the offence occurred;

(d) the amount or estimated amount of the tax or additional tax involved;

(e) the particulars of the fine or sentence imposed.”.

(2) Subsection (1) shall be deemed to have come into operation on 11 March 1998 and shall apply in respect of any person convicted on or after that date. 40

Amendment of section 90 of Act 58 of 1962, as amended by section 15 of Act 6 of 1963, section 23 of Act 95 of 1967, section 35 of Act 121 of 1984, section 20 of Act 96 of 1985 and section 38 of Act 129 of 1991

43. Section 90 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of the following paragraph: 45

“(a) by any representative taxpayer, liable to assessment or for the payment of such tax or interest under this Act or under any previous Income Tax Act **[or any ordinance of a provincial council imposing taxes on persons or the incomes of persons];”.**

Amendment of section 102 of Act 58 of 1962, as substituted by section 28 of Act 69 of 1975 and amended by section 27 of Act 91 of 1982

44. Section 102 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding the proviso to subsection (1) of the following words: 5
 “If it is proved to the satisfaction of the Commissioner that any amount paid by a taxpayer was in excess of the amount properly chargeable under this Act, the Commissioner may, subject to the provisions of subsection (4), authorize a refund to such taxpayer of any tax overpaid.”; and
- (b) by the addition of the following subsection: 10
 “(4) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.”. 15

Amendment of section 103 of Act 58 of 1962, as amended by section 14 of Act 101 of 1978, section 37 of Act 121 of 1984, section 19 of Act 70 of 1989 and section 29 of Act 36 of 1996 20

45. (1) Section 103 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 - “(2) Whenever the Commissioner is satisfied that—
 - (a) any agreement affecting any company or trust; or
 - (b) any change in— 25
 - (i) the shareholding in any company; or
 - (ii) **[in]** the members’ interests in any company which is a close corporation; or
 - (iii) the trustees or beneficiaries of any trust,
 as a direct or indirect result of which income has been received by or has 30
 accrued to that company or trust during any year of assessment, has at any time before or after the commencement of the Income Tax Act, 1946, been entered into or effected by any person solely or mainly for the purpose of utilizing any assessed loss or any balance of assessed loss incurred by the company or trust, in order to avoid liability on the part of that company or trust 35
 or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed.”;
- (b) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words: 40
 “Any decision of the Commissioner under subsection (1), (2) or (3) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the transaction, operation, scheme, agreement or change in shareholder or members’ interests or trustees or beneficiaries of the trust in question would result in the avoidance or the postponement of liability for 45
payment of any tax, duty or levy imposed by this Act or any previous Income Tax Act or any other law administered by the Commissioner, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved—”; and
- (c) by the substitution for paragraph (b) of subsection (4) of the following 50
 paragraph:
 - “(b) in the case of any such agreement or change in shareholding or members’ interests or trustees or beneficiaries of such trust, that it has been entered into or effected solely or mainly for the purpose of utilizing the assessed loss or balance of assessed loss in question in order to avoid or postpone 55
 such liability or to reduce the amount thereof.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any agreement affecting any trust entered into on or after that date or any change in trustees or beneficiaries effected on or after that date.

Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973, section 46 of Act 97 of 1986, section 29 of Act 21 of 1994 and section 37 of Act 28 of 1997 5

46. Section 107 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) prescribing the nature and contents of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;”.

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Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995 and section 41 of Act 28 of 1997 15

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

(a) by the substitution for paragraphs (b) and (c) of “formula C” of the following paragraphs: 20

“(b) ‘B’ represents—

(i) where the number of completed years of employment are in terms of the rules of the fund in question taken into account for the purpose of determining the amount of the benefit payable to him by the fund, 25
the number of completed years of employment of the taxpayer after 1 March 1998, including previous or other periods of service approved as pensionable service in terms of the rules of any fund after 1 March 1998 [**which is, in terms of the rules of the fund in question, taken into account for the purpose of determining the amount of the benefits payable to him by the fund**] (other than completed years of employment representing any benefit of a member of any fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1, hereinafter referred to as a ‘public sector fund’, which is after 1 March 1998 paid for the benefit of such member into another public sector fund in respect of any previous or other periods of service or membership accounted for prior to 1 March 1998 in terms of the rules of any public sector fund); or 35

(ii) [**if**] where the number of completed years of employment is not taken into account for that purpose, the number of completed years after 1 March 1998 during which the taxpayer had, until the date of accrual of any benefit, been a member of [the] any public sector fund or funds; 40

(c) ‘C’ represents— 45

(i) where the number of completed years of employment are in terms of the rules of the fund in question taken into account for the purpose of determining the amount of the benefits payable to him by the

- fund, the total number of completed years of employment taken into account for the purpose of determining the amount of the benefits payable to the taxpayer by the fund; or
- (ii) [if] where the number of completed years of employment is not taken into account for that purpose, the number of completed years during which the taxpayer had, until the date of accrual of any benefit, continuously been a member of [the] any public sector fund or funds;”;
- (b) by the substitution for the definition of “lump sum benefit” of the following definition:
- “ ‘lump sum benefit’ includes any amount determined by the commutation of an annuity or portion of an annuity and any fixed or ascertainable amount (other than an annuity) payable by or provided in consequence of membership or past membership of any fund referred to in paragraph (e) of the definition of ‘gross income’ in section 1 of this Act whether in one amount or in instalments;”;
- (c) by the substitution in the Afrikaans text for paragraph (b) of the definition of “pensioenfondse” of the following paragraph:
- “(b) ’n fonds in paragraaf (a) of (b) van die omskrywing van ‘pensioenfondse’ in artikel 1 van hierdie Wet bedoel (behalwe ’n fonds in paragraaf (b) van die omskrywing van ‘voorsorgsfondse’), waarvan die reëls geheel en al of hoofsaaklik voorsiening maak vir jaargelde aan sy lede met [uitdienstreding] uittreding;”;
- (d) by the substitution in the Afrikaans text for paragraph (b) of the definition of “voorsorgsfondse” of the following paragraph:
- “(b) ’n fonds in paragraaf (a) of (b) van die omskrywing van ‘pensioenfondse’ in artikel 1 bedoel, waarvan die reëls voorsiening maak vir voordele in die vorm van ’n enkelbedrag wat een-derde van die gekapitaliseerde waarde van alle voordele (met inbegrip van enkelbedragbetalings en jaargelde) aan sy lede met [uitdienstreding] uittreding te bowe gaan.”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 March 1998.

Substitution of paragraph 2 of Second Schedule to Act 58 of 1962, as substituted by section 42 of Act 28 of 1997

48. The following paragraph is hereby substituted for paragraph 2 of the Second Schedule to the Income Tax Act, 1962:
- “2. Subject to the provisions of paragraph 2A, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 of this Act shall be the aggregate of the amounts received by or accrued to such person by way of lump sum benefits during any year of assessment from or in consequence of membership or past membership of any pension funds, provident funds or retirement annuity funds, less the deductions permitted under the provisions of this Schedule.”.

Amendment of paragraph 2A of Second Schedule to Act 58 of 1962, as inserted by section 43 of Act 28 of 1997

49. Paragraph 2A of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following proviso:
- “Provided that the determination of the deemed amount of the lump sum benefit in terms of this paragraph shall only apply if the person was a member of a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 of this Act on 1 March 1998 and thereafter uninterruptedly continued to be a member of any such fund until the date of accrual of the lump sum benefit.”.

Substitution of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983

50. The following paragraph is hereby substituted for paragraph 3 of the Second Schedule to the Income Tax Act, 1962:
- “3. Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member or past member of a pension fund, provident fund or retirement annuity fund shall be deemed to be a lump sum benefit which

accrued to such member or past member immediately prior to his death: Provided that so much of any tax payable as is due to the inclusion in the income of such member or past member of any amount in accordance with the provisions of this paragraph, may be recovered from the person to whom or in whose favour the lump sum benefit in question accrues: Provided further that where any annuity which became payable or may become payable or which is provided or may be provided on or in consequence of or following upon the death of a member or past member of any such fund has on or after 1 July 1983 been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum which has become recoverable in consequence of or following upon the death of such member or past member.”.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 26 of Act 90 of 1964 and amended by section 18 of Act 104 of 1979, section 5 of Act 30 of 1984 and section 32 of Act 141 of 1992

51. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraphs (a) and (b) of the following subparagraphs, respectively:
 - “(a) so much of any lump sum benefit so derived by the taxpayer from any **[fund approved by the Commissioner as a] pension fund [in respect of the year of assessment in question]** as is paid for the benefit of such taxpayer into any other **[fund approved by the Commissioner as a] pension fund or retirement annuity fund [in respect of that year];**
 - (b) so much of any lump sum benefit so derived by the taxpayer from any **[fund approved by the Commissioner as a] provident fund [in respect of the year of assessment in question]** as is paid for the benefit of such taxpayer into any **[fund approved by the Commissioner as a] pension fund, provident fund or retirement annuity fund [in respect of that year];**”;
- (b) by the substitution for the provisos of the following proviso:
 - (i) in respect of any lump sum benefits so derived by the taxpayer from any pension fund, provident fund or retirement annuity fund the sum of the deductions under this paragraph shall not be less than the lesser of either the aggregate value of such lump sum benefits or the sum of the taxpayer’s own contributions to such fund, including so much of any amounts paid into such fund for his benefit by any other pension fund, provident fund or retirement annuity fund as represented his own contributions to such other fund, but excluding so much of such contributions and amounts representing contributions as ranked for deduction against the taxpayer’s income in terms of section 11(k) or (n) of this Act or the corresponding provisions of any previous Income Tax Act;
 - (ii) **[Provided further that]** for the purposes of this paragraph the surrender value of any policy of insurance ceded or otherwise made over to the taxpayer by any aforesaid fund and ceded or otherwise made over by the taxpayer to another such fund in the appropriate circumstances contemplated by this paragraph or any amount paid in such circumstances by the taxpayer into such other fund in lieu of or as representing such surrender value or a portion thereof, shall, if such surrender value is in terms of subparagraph (2)*bis* of paragraph 4 deemed to be a lump sum benefit accruing to the taxpayer, be deemed to have been paid for the benefit of the taxpayer into such other fund; and
 - (iii) where the lump sum benefit in question has been derived in consequence of or following upon the taxpayer’s withdrawal or resignation from a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 of this Act, the deduction to be allowed in terms of subparagraph (a) or (b) of this paragraph shall be limited to the amount determined in accordance with ‘formula C’.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1998.

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 and section 44 of Act 28 of 1997

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

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

“ ‘labour broker’ means any person who conducts or carries on [a labour broker’s office as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956), whether or not such labour broker’s office is registered under section 63 of that Act] any business whereby such person for reward provides a client of such business with other persons (other than any person who qualifies as a labour broker under this definition) to render a service or perform work for such client, or procures such other persons for the client, for which services or work such other persons are remunerated by such person;”; and

(b) by the substitution for the expression “40 per cent” in paragraph (c) of the definition of “remuneration” of the expression “50 per cent”.

(2) Subsection (1)(b) shall be deemed to have come into operation on 1 April 1998.

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996 and section 48 of Act 28 of 1997

53. (1) Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of subparagraph (4) of the following words:

“Where the taxpayer is entitled to a deduction under section 11(k) or (n) of this Act in respect of any contribution to a pension fund or retirement annuity fund which has not been taken into account by his employer in the determination of the balance contemplated in the definition of ‘net remuneration’ in subparagraph (1), or to a deduction under section [16A or] 18 of this Act, and the taxpayer’s taxable income derived otherwise than from net remuneration cannot be reduced by the full amount of any such deduction, the Commissioner shall on application made by the taxpayer amend—”.

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

Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990 and section 49 of Act 28 of 1997

54. (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the addition of the word “or” at the end of subparagraph (h); and

(b) by the addition of the following subparagraph:

“(i) the employer has during any period, directly or indirectly, made any contribution or payment to any fund contemplated in paragraph (b) of the definition of ‘benefit fund’ in section 1 of this Act, for the benefit of any employee or the dependants of any such employee, which exceeds two thirds of the total contribution or payment in relation to such employee or dependants to such fund during such period.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1998.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 van 1984 and amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993, section 33 of Act 21 of 1994 and section 49 of Act 28 of 1997

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55. (1) Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(2) The cash equivalent of the value of the taxable benefit derived from the occupation of residential accommodation as contemplated in paragraph 2(d) shall be the rental value of such accommodation (as determined under subparagraph (3), (3A), (4) or (5) **[or (9)]** of this paragraph in respect of the year of assessment) less any rental consideration given by the employee for such accommodation in respect of such year, any rental consideration given by him in respect of household goods supplied with such accommodation and any charge made to the employee by the employer in respect of power or fuel provided with the accommodation.”;

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

“(3) Subject to the provisions of subparagraph (3A), the rental value to be placed on such accommodation (other than accommodation referred to in subparagraph (4)) for any year of assessment shall be the greater of—

(a) an amount determined in accordance with the formula

$$(A - B) \times \frac{C}{100} \times \frac{D}{12},$$

in which formula—

[(a)] (i) ‘A’ represents the remuneration factor as determined in relation to the year of assessment;

[(b)](ii) ‘B’ represents an abatement equal to an amount of R20 000: Provided that in any case where—

[(i)](aa) the employer is a private company and the employee or his spouse controls the company or is one of the persons controlling the company, whether control is exercised directly as a shareholder in the company or as a shareholder in any other company; or

[(ii)](bb) the employee, his spouse or minor child has a right of option or pre-emption granted by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer whereby the employee, his spouse or minor child may become the owner of the accommodation, whether directly or indirectly by virtue of a controlling interest in a company or otherwise,

the said abatement shall be reduced to zero;

[(c)] (iii) ‘C’ represents a quantity of **[16] 17**: Provided that where the accommodation consists of a house, flat or apartment consisting of at least four rooms—

[(i)] (aa) ‘C’ represents a quantity of **[17] 18** if—

[(aa)](A) such accommodation is unfurnished and power or fuel is supplied by the employer; or

[(bb)](B) such accommodation is furnished but power or fuel **[are]** is not supplied; or

[(ii)](bb) ‘C’ represents a quantity of **[18] 19** if such accommodation is furnished and power or fuel is supplied by the employer; and

[(d)] (iv) ‘D’ represents the number of months in relation to a year of assessment during which the employee was entitled to occupation of such accommodation; or

- (b) the total amount of the rentals payable for such accommodation by the employer or associated institution in relation to the employer and any other expenditure defrayed by the employer or associated institution in respect of such accommodation.”;
- (c) by the insertion after subparagraph (3) of the following subparagraphs: 5
 “(3A) Subject to subparagraph (3B), the value determined in accordance with the formula contemplated in subparagraph (3)(a) shall apply where—
 (a) the full ownership of such accommodation vests in the employer or associated institution in relation to the employer; or
 (b) the full ownership does not so vest in the employer or associated institution, and— 10
 (i) it is customary for an employer in the industry concerned to provide free or subsidised accommodation to its employees; and
 (ii) it is necessary for the particular employer, having regard to the particular kind of employment, to provide free or subsidised accommodation— 15
 (aa) for the proper performance by the employees of their duties; or
 (bb) as a result of the frequent movement of employees; or
 (cc) as a result of the lack of employer-owned accommodation; and
 (iii) the benefit is provided solely for *bona fide* business purposes, other than the obtaining of a tax benefit. 20
 (3B) Where the employee has an interest in the accommodation in question, subparagraph (3) shall apply.”;
- (d) by the substitution for subparagraph (5) of the following subparagraph: 25
 “(5) Where, by reason of the situation, nature or condition of the accommodation or any other factor, the Commissioner is satisfied that the rental value of such accommodation is less than the rental value thereof **[determinable under]** determined in accordance with the formula contemplated in subparagraph (3)(a) or the rental value determinable under subparagraph (4), he may determine such rental value at such lower amount as to him appears fair and reasonable.”; 30
- (e) by the substitution for subparagraph (9) of the following subparagraph: 35
 “(9) **[Notwithstanding the provisions of subparagraph (3)]** Where the employee has been provided with residential accommodation by his employer or any associated institution in relation to the employer and such employee has an interest in the accommodation in question, as contemplated in subparagraph (10), and the accommodation has been let to the employer or to any associated institution in relation to the employer, **[the rental value of the accommodation shall be deemed to be the greater of—**
 (i) **the total amount of the rentals payable therefore by the employer or associated institution in relation to the employer and any other expenditure defrayed by the employer or associated institution in respect of such accommodation; or** 40
 (ii) **the rental value determined in accordance with subparagraph (3), and in such case]** the said rental shall for the purposes of this Act (excluding this subparagraph) be deemed not to have been received by or to have accrued to the employee or any connected person in relation to the employee.”; and 45
- (f) by the substitution for the words preceding item (a) of subparagraph (10) of the following words: 50
 “For the purposes of **[subparagraph]** subparagraphs (3B) and (9), an employee shall be deemed to have an interest in accommodation if—”.
- (2) Subsection (1) shall come into operation on 1 March 1999.

Insertion of paragraph 12A in Seventh Schedule to Act 58 of 1962

56. (1) The following paragraph is hereby inserted in the Seventh Schedule to the Income Tax Act, 1962, after paragraph 12: 55

“CONTRIBUTION TO BENEFIT FUND

12A. (1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(i) shall be the amount by which the contribution or payment by the employer, directly or indirectly, to any fund, contemplated in paragraph (b) of the definition of ‘benefit fund’ in section 1 of this Act, for the benefit of any employee or dependants of such employee for any period, exceeds two thirds of the total contribution or payment in relation to such employee or dependants of such employee to such fund during such period. 5

(2) Where any contribution or payment made by an employer contemplated in subparagraph (1) is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employee or dependants of such employee for whose benefit it is made, the cash equivalent of the value of the taxable benefit contemplated in paragraph 2(i) in relation to such employee shall be determined in accordance with the formula 10 15

$$A = \frac{B + C}{3 \times D} - E,$$

in which formula—

- (a) ‘A’ represents the value of the taxable benefit in relation to an employee; 20
- (b) ‘B’ represents the total contribution or payment by the employer to the fund for the benefit of all employees or dependants of such employees in respect of whom such payment is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employees or their dependants; 25
- (c) ‘C’ represents the total contribution or payment by all employees contemplated in symbol ‘B’;
- (d) ‘D’ represents the number of employees contemplated in symbol ‘B’; and
- (e) ‘E’ represents the contribution or payment by the relevant employee. 30

(3) If the Commissioner is in any case satisfied that the apportionment of the cash equivalent of the value of the benefit amongst all members of any fund in accordance with the formula contemplated in subparagraph (2) does not reasonably represent a fair apportionment of such value amongst the members, he may direct that such apportionment be made in such other manner as to him appears fair and reasonable. 35

(4) The exercise by the Commissioner of his discretion contemplated in subparagraph (3) shall be subject to objection and appeal.

(5) No value shall be placed in terms of this paragraph on the taxable benefit derived from an employer by— 40

- (a) a person who by reason of superannuation, ill-health or other infirmity retired from the employ of such employer; or
- (b) the dependants of a person after such person’s death, if such person was in the employ of such employer on the date of death; or
- (c) the dependants of a person after such person’s death, if such person retired from the employ of such employer by reason of superannuation, ill-health or other infirmity.” 45

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1998 and shall apply to any contribution or payment made by an employer on or after that date.

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

57. Section 1 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the definition of “agricultural distiller” in subsection (1) of the following definition:

- “ ‘agricultural distiller’ means any owner or occupier of a farm in the 10
[Province of Northern Cape, Eastern Cape, the Western Cape, Pretoria-
Witwatersrand-Vereeniging, Eastern Transvaal, Northern Transvaal,
North West, or the Orange Free State] Republic who—
- (a) is licensed to keep a still on such farm; and
 - (b) [in the Province of Northern Cape, Eastern Cape or the Western 15
Cape] is licensed to distill spirits exclusively from [grapes grown by
him on such farm; or
 - (c) in the Province of Pretoria-Witwatersrand-Vereeniging, Eastern
Transvaal, Northern Transvaal, or the Orange Free State is licensed
to distil spirits on such farm from grapes or other] prescribed fresh 20
fruit grown by him on such farm;”.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995 and section 34 of Act 34 of 1997 25

58. Section 4 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the addition to subsection (3) of the following paragraph:
“(c) such information in relation to any person as may be required by the
Chief of the Central Statistical Services in connection with the collection
of statistics in complying with the provisions of the Statistics Act, 1976 30
(Act No. 66 of 1976), or any regulation thereunder.”; and
- (b) by the substitution for subsection (3A) of the following subsection:
“(3A) The Chief of the Central Statistical Services or any person
acting under the direction and control of such Chief, shall not disclose
any information supplied under subsection (3)(c) to any person or permit 35
any person to have access thereto, except in the exercise of that Chief’s
powers or the carrying out of that person’s duties under the direction and
control of such Chief, to collect statistics or to publish statistics in any
anonymous form.”.

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 and section 14 of Act 59 of 1990 40

59. Section 20 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the proviso to subsection (5) of the following proviso:

- “Provided that in the case of goods manufactured in any customs and excise 45
manufacturing warehouse or in the case of goods in the process of manufacture and
removal from one customs and excise manufacturing warehouse to another such
warehouse, the Commissioner may [subject to the provisions of section 35(2)]
allow working, pumping, handling, processing and similar losses and losses due to
natural causes, between the time when liability for duty first arises and the time of 50
removal of such goods from the warehouse in which the goods are so manufactured
or in which such process of manufacture is completed, to the extent specified in

Schedule No. 4 or 6, if he is satisfied that no part of such loss was willfully or negligently caused.”.

Amendment of section 34 of Act 91 of 1964, as amended by section 15 of Act 98 of 1980, section 3 of Act 86 of 1982, section 1 of Act 69 of 1988, section 2 of Act 19 of 1994 and section 22 of Act 45 of 1995

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60. Section 34 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Spirits manufactured by an agricultural distiller in the [province of Pretoria-Witwatersrand-Vereeniging, Eastern Transvaal, Northern Transvaal, or the Orange Free State] Republic from any prescribed fruit [other than grapes] shall be solely for his private use on the farm where such fruit was produced and such spirits were manufactured.”.

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Amendment of section 37 of Act 91 of 1964, as amended by section 8 of Act 95 of 1965, section 12 of Act 105 of 1969, sections 7 and 15 of Act 98 of 1980, section 8 of Act 84 of 1987, section 17 of Act 59 of 1990 and section 27 of Act 45 of 1995

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61. Section 37 of the Customs and Excise Act, 1964, is hereby amended—

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

“Notwithstanding the provisions of subsection (1), but subject to the provisions of subsection (4), the Commissioner may, on such conditions as he may in each case impose, for the purpose of preserving any goods in a customs and excise storage warehouse or of reconditioning such goods which, as a result of contamination or deterioration or for any other reason, have become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods, excluding any marked goods referred to in section 37A, to be reconditioned or to be mixed or blended in such warehouse with other goods, and in that event duty shall be paid, in lieu of the duties prescribed in subsection (1), according to the first account taken of any such goods or the total quantity of such reconditioned, mixed or blended goods, whichever quantity is the greater, as follows, namely—”; and

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

“(a) Notwithstanding anything to the contrary in this Chapter contained, the Commissioner may, on such conditions as he may in each case impose, permit the mixing or blending in such circumstances and at such place as he may specify of any mineral oil products, including fuel levy goods, but excluding any marked goods referred to in section 37A, with one another or with other goods whether or not such products or goods are in a customs and excise warehouse or have been entered for home consumption and have passed out of customs and excise control for any purpose, including that of rendering such goods saleable or more readily saleable or of fulfilling special orders.”.

Insertion of section 37A in Act 91 of 1964

62. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 37:

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“Special provisions in respect of marked goods and certain goods that are free of duty

37A. (1) (a) Notwithstanding anything to the contrary in this Act contained, any goods classified under any heading or subheading of Chapter 27 of Part 1 of Schedule No. 1 which are also classified under any item of Part 2 and Part 5 of Schedule No. 1 where such goods are specified

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and such heading or subheading is expressly quoted for which a free rate of duty is prescribed, in respect of each such heading or subheading and item, shall on importation into or manufacture in the Republic be entered for storage and be stored in a customs and excise warehouse.

(b) For the purposes of this section the Commissioner may regard any licensed customs and excise manufacturing warehouse as a licensed customs and excise storage warehouse.

(2)(a) If any goods are described in any such heading or subheading or item as marked, the goods concerned shall be marked by the licensee in a customs and excise warehouse before removal therefrom by the addition of a marker in such proportion, and in accordance with such procedure, as may be prescribed by rule.

(b) Any goods so marked and any other goods to which the provisions of subsection (1) apply shall, as may be prescribed by rule, be stored separately from any other goods and shall be subject to the provisions of this Act relating to dutiable goods stored in and removed from a customs and excise warehouse.

(c) Notwithstanding anything to the contrary in this Act contained—

(i) any reference to ‘marked goods’ or ‘marker’ in this or any other section or in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule shall be regarded as a reference to goods marked as contemplated in paragraph (a);

(ii) any reference to ‘unmarked goods’ in this or any other section or in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule shall be regarded as a reference to goods which, except for the reference to marked, are of the same description as marked goods and are specified as unmarked goods of such description in any such heading, subheading or item;

(iii) whenever it is necessary for the purposes of this section to establish the presence of marked goods in any goods, any such goods shall be regarded as containing marked goods when such goods contain a proportion of the marker exceeding that as may be prescribed by rule.

(d) The addition of such marker shall not constitute mixing or blending for the purposes of section 37, except as provided in this section for the purposes of classification of any goods under any heading, subheading or item of any Schedule.

(e) The application of the free rate of duty specified in any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 and Part 5 of Schedule No. 1 in respect of any goods described as marked goods shall be subject to the provisions of this section.

(3)(a) Any person who sells or disposes of in any manner, whether or not for any consideration, any marked goods at any one time in excess of the quantity prescribed by rule, shall issue to the purchaser, or to any other person to whom the goods are so disposed of, an invoice containing such statement and such other particulars as may be prescribed by rule.

(b) Any person who so sells or disposes of marked goods shall keep a copy of such invoice and any person to whom such invoice is issued shall keep such invoice for such period as may be prescribed by rule.

(c) Any person who, at any time, so sells or disposes of or is at any time in possession of or has under his control any marked goods in excess of the quantity prescribed by rule shall complete and keep such books, accounts and other documents in such form and reflecting such particulars and for such period as may be prescribed by rule.

- (4)(a) No person shall—
- (i) mix any marked goods in any proportion with distillate fuel, petrol or any lubricity agent;
 - (ii) use any marked goods, whether or not mixed with any other goods in any proportion, as fuel in any engine;
 - (iii) sell or dispose of in any manner whether or not for any consideration or acquire any marked goods for use as fuel in any engine;
 - (iv) be in possession of any marked goods mixed in any proportion with distillate fuel, petrol or any lubricity agent;
 - (v) be in possession of any marked goods as fuel in any engine; or
 - (vi) remove or neutralise or attempt to remove or neutralise any marker in any marked goods.
- (b) Any person who so mixes or uses or sells or disposes or acquires or possesses any marked goods or so removes or neutralises or attempts to remove or to neutralise any marker, shall, in addition to any other liability incurred in terms of this Act, be liable for the payment of an amount equal to treble the sum of such duties as may be leviable on any distillate fuel, petrol, lubricity agent or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greater amount of duty, in respect of all marked goods which—
- (i) are in the possession or under the control of such person or on any premises in the possession or under the control of such person; and
 - (ii) if the Commissioner so determines, were previously sold or disposed of or purchased or were in the possession or under the control of such person or on any premises in the possession or under the control of such person at any time, unless it is proved within 30 days from the date of any demand for payment of duty in terms of this section that the goods concerned have not been dealt with contrary to the provisions of paragraph (a).
- (c)(i) If different rates of duty on such distillate fuel, petrol, lubricity agents or unmarked goods were in force during any period in respect of which the duties are calculated for the purposes of the payment referred to in paragraph (b), the highest rate in force at the relevant time shall be applied for the purposes of calculating the duty payable as provided in paragraph (b).
- (ii) If any tank, including the fuel tank of any engine, or other container is found to contain any marked goods mixed with distillate fuel, petrol or any lubricity agent, duty shall be payable on the total quantity of such mixed goods as calculated in accordance with paragraph (b).
- (d) Notwithstanding anything to the contrary in this Act contained, any person who, contrary to subsection (3) and the rules, fails to—
- (i) issue any invoice;
 - (ii) keep any invoice issued or copy thereof;
 - (iii) complete and keep the books, accounts and documents; or
 - (iv) forthwith furnish any officer at such officer's request with such invoice or copy thereof and with the books, accounts and documents, required to be completed and kept,
- shall, in addition to any other liability incurred in terms of this Act, be liable in respect of the goods to which such invoice, books, accounts or documents relate for the payment of an amount equal to treble the sum of such duties as may be leviable on any distillate fuel, petrol, lubricity agents or unmarked goods in accordance with the provisions of Schedule No. 1, whichever yields the greater amount of duty, unless it is proved within 30 days of the date of any demand for payment of duty in terms of the section that the goods concerned have not been dealt with contrary to the provisions of this section.

- (e) Any amount for which any person is liable in terms of this subsection shall be payable upon demand by the Commissioner.
- (f) Payment of any amount in respect of the goods referred to in subparagraph (b)(i) shall not absolve the person concerned from compliance with the provisions of paragraph (a). 5
- (5)(a) For the purposes of this section an officer may—
- (i) take samples of any goods in any tank or other container or in any fuel tank of any engine;
 - (ii) analyse or send any such samples to any designated institution for analysis; 10
 - (iii) stop any vehicle or mobile apparatus with or without the assistance of any traffic officer or member of the South African Police Service or the South African National Defence Force.
- (b) The provisions of section 106(2) shall *mutatis mutandis* apply to any sample taken under this subsection. 15
- (c) The Commissioner may by rule—
- (i) prescribe the method to be used for the taking and analysing of samples by an officer;
 - (ii) prescribe the form of recording any results of such analyses;
 - (iii) designate any institution to analyse such samples; 20
 - (iv) prescribe the method to be used for such analysis and the form of report of such analysis;
 - (v) prescribe the method of sealing any tank or container.
- (6)(a) If any report by any institution designated by rule reveals facts that indicate that the goods concerned have been dealt with contrary to the provisions of this section— 25
- (i) such goods and any container thereof;
 - (ii) any vehicle used in the removal or carriage of such goods or in which such goods are used as fuel, subject to the provisions of section 87(2); 30
 - (iii) any engine, or any apparatus operated by such engine, in which such goods are used as fuel,
- shall be liable to forfeiture.
- (b) For the purposes of this section, any such report shall be regarded as a correct analysis of the composition of such goods unless the contrary is proved. 35
- (7) No person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer or any person who assists him under the provisions of this section.
- (8) For the purposes of this section— 40
- ‘engine’ referred to in subsection (4)(a) and (c)(ii) and subsection (5)(a)(i) includes any engine of any machine, machinery, plant, equipment, apparatus or vehicle, classified under any heading or subheading of Chapters 84 to 87 of Schedule No. 1;
- ‘vehicle’ includes any vehicle as classified under any heading or subheading of Chapters 86 and 87 of Schedule No. 1.”. 45

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

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995 and section 4 of Act 44 of 1996 50 55

63. Section 47 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for the words preceding the proviso to subsection (1) of the following words:
- “Subject to the provisions of this Act, duty shall be paid for the benefit of the [State] National Revenue Fund on all imported goods, all excisable 60

goods, all surcharge goods and all fuel levy goods in accordance with the provisions of Schedule No. 1 at the time of entry for home consumption of such goods:";

- (b) by the substitution for subsections (5) and (6) of the following subsections, respectively:

"(5) Any export duty which may become payable in terms of section 48(4) shall be paid for the benefit of the [State] National Revenue Fund, at the time of entry for export, on such goods as may be specified in Part 6 of Schedule No. 1 in terms of the provisions of the said section.

(6) Any duty payable in terms of section 53, any anti-dumping duty payable in terms of section 56, any countervailing duty payable in terms of section 56A and any safeguard duty payable in terms of section 57 shall be paid for the benefit of the [State] National Revenue Fund in accordance with the provisions of the said sections."; and

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

"(c) The Commissioner may [within 90 days from the date of] publish any such determination [publish it] by notice in the *Gazette*."

Amendment of section 48 of Act 91 of 1964, as amended by section 6 of Act 57 of 1966, section 18 of Act 105 of 1969, section 3 of Act 98 of 1970, section 1 of Act 68 of 1973, section 8 of Act 105 of 1976, section 11 of Act 112 of 1977, sections 10 and 15 of Act 98 of 1980, section 9 of Act 86 of 1982, section 18 of Act 84 of 1987, section 7 of Act 68 of 1989, section 23 of Act 59 of 1990, section 4 of Act 61 of 1992, section 3 of Act 19 of 1994 and section 39 of Act 45 of 1995

64. Section 48 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (c) of subsection (4A) of the following paragraph:

"(c) Any such ordinary levy shall be paid for the benefit of the [State] National Revenue Fund as specified in section 47(1) and shall, for the purposes of that section, be deemed to be a duty paid in accordance with the provisions of Schedule No. 1."

Substitution of section 49 of Act 91 of 1964, as substituted by section 12 of Act 27 of 1997

65. The following section is hereby substituted for section 49 of the Customs and Excise Act, 1964:

"Agreements in respect of rates of duty lower than the general rates of duty

49. (1) Notwithstanding anything to the contrary in this Act contained, the National Executive may conclude agreements with the government of any country—

(a) whereby goods produced or manufactured in or imported into the Republic are admitted into that country free of duty or at special rates of duty and goods produced or manufactured in or imported into that country are admitted into the Republic free of duty or at special rates of duty; or

(b) for the exchange of information and the rendering of mutual and technical assistance in respect of customs co-operation between the Republic and such other country.

(2) Notwithstanding anything to the contrary in this Act contained, the Commissioner may by rule prescribe such conditions as may be required to comply with and give effect to the specific provisions of the agreements contemplated in subsection (1)(a)."

Insertion of section 50 in Act 91 of 1964

66. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 49:

“Disclosure of information and rendering of mutual assistance in terms of convention or agreement

- 50.** Notwithstanding the provisions of section 4(3), the Commissioner may in accordance with any convention or agreement in respect of customs co-operation to which the Republic is a party—
- (a) disclose or authorize any officer to disclose any information relating to any person, firm or business acquired by that officer in the carrying out of his duties;
 - (b) render mutual and technical assistance in accordance with such convention or agreement; and
 - (c) authorize any officer to exercise any powers under this Act which may be considered necessary for the purposes of rendering such assistance.”.

Insertion of sections 76B and 76C in Act 91 of 1964

67. (1) The following sections are hereby inserted in the Customs and Excise Act, 1964, after section 76A:

“Limitation on refund claims

76B. (1) Where any person became entitled to any refund of any duty arising from any determination, new determination or amendment of any such determination in terms of section 47(9), 65 or 69, any such refund shall, notwithstanding the provisions of section 40, 47(9), 65, 69, 75, 76 or 77 be limited to refunds in respect of goods entered for home consumption during a period of two years immediately preceding the date of such determination, new determination or any amendment of such determination, whichever date occurs last.

(2) Where a person has appealed against any determination, new determination or amendment the period referred to in subsection (1) shall, notwithstanding the fact that a court may amend any determination of the Commissioner, or the Commissioner, as a result of a finding of such court, amends such determination, be calculated from the last date contemplated in subsection (1).

Set-off of refund against amounts owing

76C. Where any refund of duty is in terms of this Act due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under any other law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person in terms of this Act.”.

(2) Subsection (1) shall in so far as it inserts section 76B in the Customs and Excise Act, 1964, come into operation on the date of promulgation of this Act and shall apply to all refund claims based on a determination, new determination or amendment made on or after that date.

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of Act 59 of 1990, section 8 of Act 105 of 1992 and section 8 of Act 98 of 1993

68. Section 80 of the Customs and Excise Act, 1964, is hereby amended—

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

- “(h) without lawful excuse (the proof of which shall lie upon him), brings into the Republic, produces or has in his possession any blank or incomplete invoice or any billhead or other similar document capable of being **[filled up]** completed and used as an invoice for goods from outside the Republic;”; and 5
- (b) by the substitution for paragraph (o) of subsection (1) of the following paragraph:
- “(o) contravenes the provisions of section 18(13), 18A(9), 20(4)*bis*, 35A(4), 37(9), 37A(4)(a), 60(1), 63(1), 75(7A), 75(19), 88(1)(bA), 113(2), 113(8)(c) or 114(2A); or”. 10

Insertion of section 86A in Act 91 of 1964

69. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 86:

“Publication of names of offenders

- 86A.** (1) The Commissioner may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of any offence in terms of— 15
- (a) sections 78 to 86, inclusive, or the rules;
- (b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a), 20
- after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.
- (2) Every such list may specify—
- (a) the name and address of the offender; 25
- (b) such particulars of the offence as the Commissioner may think fit;
- (c) the amount or estimated amount of duty involved;
- (d) the particulars of the fine or sentence imposed.”.
- (2) Subsection (1) shall be deemed to have come into operation on 11 March 1998 and shall apply in respect of any person convicted on or after that date.

Amendment of section 92 of Act 91 of 1964, as amended by section 11 of Act 98 of 1993 and section 61 of Act 45 of 1995 30

70. (1) Section 92 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any fine or penalty recovered under this Act shall be paid to the Controller in the area where such fine or penalty is recovered, and shall be paid by him into the **[Consolidated]** National Revenue Fund, and the proceeds of sale of anything forfeited, or seized and condemned under this Act shall also be paid into the said fund: Provided that the Commissioner may withhold a sum not exceeding one-third of any such fine, penalty or proceeds which he may then award to any person, **[including]** excluding any officer or person employed by the South African Revenue Service, by whose means or information the fine or penalty or forfeiture was imposed or the seizure made.”. 35
- (2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette* and no award to any officer or person employed by the South African Revenue Service shall be paid by the Commissioner after such date. 45

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982 and section 62 of Act 45 of 1995 50

71. Section 99 of the Customs and Excise Act, 1964, is hereby amended—

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

- “(1) An agent appointed by any master, container operator or pilot, and any person who represents himself to any officer as the agent of any master, container operator or pilot, and is accepted as such by that officer, shall be liable for the fulfillment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such master, container operator or pilot by this Act and to any penalties or **[forfeitures]** amounts demanded under section 88(2)(a) which may be incurred in respect of that matter.”;
- (b) by the substitution for the words preceding the proviso to subsection (2)(a) of the following words:
- “An agent appointed by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal and any person who represents himself to any officer as the agent of any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and is accepted as such by that officer, shall be liable for the fulfillment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal by this Act and to any penalties or amounts demanded under section 88(2)(a) which may be incurred in respect of that matter.”;
- (c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
- “(b) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall by virtue of the provisions of paragraph (a) be relieved from liability for the fulfillment of any obligation imposed on him by this Act and to any penalty or amounts demanded under section 88(2)(a) which may be incurred in respect thereof.”; and
- (d) by the substitution for the words preceding the proviso to paragraph (a) of subsection (4) of the following words:
- “An agent (including a representative or associate of the principal) representing or acting for or on behalf of any exporter, manufacturer, supplier, shipper or other principal outside the Republic who exports goods to the Republic, shall be liable, in respect of any goods ordered through him or obtained by an importer by means of his services, for the fulfillment of all obligations imposed upon such exporter, manufacturer, supplier, shipper or other principal by this Act, and to any penalties or **[forfeitures]** amounts demanded under section 88(2)(a) which may be incurred by such exporter, manufacturer, supplier, shipper or other principal under this Act.”.

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995

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

- “(f) any such interest recovered shall be paid into the **[State]** National Revenue Fund.”.

Amendment of section 113 of Act 91 of 1964, as amended by section 17 of Act 95 of 1965, section 14 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 of Act 84 of 1987, section 17 of Act 68 of 1989, section 14 of Act 105 of 1992, section 12 of Act 98 of 1993 and section 71 of Act 45 of 1995

73. Section 113 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the deletion of paragraph (g) of subsection (1); and
(b) by the substitution for subsection (2) of the following subsection:

“(2) Goods which purport to have been imported under a permit, certificate or other authority [**referred to in subsection (1)**] in terms of any provision of this Act or any other law shall be deemed to have been imported in contravention of [**the provisions of that subsection**] such provision unless the permit, certificate or other authority in question is produced to the Controller.”. 5

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 15 of Act 98 of 1980, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994 and section 73 of Act 45 of 1995

74. Section 120 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph: 10

“(d) as to the control of the storage or manufacture of goods in customs and excise warehouses (including the suitability of any buildings, plant and method of manufacture for the purposes of this Act, the hours of conducting any or all operations, the securing or marking of such plant, the inspection of such warehouses and the removal of goods from such warehouses), the testing of the output of stills, the conditions on which stills may be made, possessed, imported, disposed of or used and the fresh fruit which may be used by an agricultural distiller in the [**Province of Pretoria-Witwatersrand-Vereeniging, Eastern Transvaal, Northern Transvaal, North West or the Orange Free State**] Republic for the distillation of spirits;”. 15 20

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 and section 15 of Act 27 of 1997 25 30

75. (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, this section shall be deemed to have come into operation on 11 March 1998. 35

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

76. (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, to the Customs and Excise Act, 1964, made under section 48, 56 or 75(15) of that Act during the calendar year ending on 31 December 1997 shall not lapse by virtue of the provisions of section 48(6), 56(3) or 75(16) of that Act. 40

(2) The amendment of Part 2B and Part 5 of Schedule No. 1 to the Customs and Excise Act, 1964, made under section 48 of that Act by Government Notices No. R.373 and No. R.374, respectively, of 12 March 1998, shall not lapse by virtue of the provisions of section 48(6) of that Act. 45

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 and section 4 of Act 20 of 1994

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77. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended by the substitution for the definition of “fixed deposit” of the following definition:

“ ‘fixed deposit’ means a deposit of money for a definite period of at least 89 days and includes a deposit of money for an indefinite period which is withdrawable after the expiration of a period of notice equal to at least 89 days;”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any deposit made on or after that date.

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

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

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(a) by the addition of the word “or” at the end of subparagraph (ix) of paragraph (b) of subsection (1); and

(b) by the addition to paragraph (b) of subsection (1) of the following subparagraph:

“(x) the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Labour Relations Act, 1995 (Act No. 66 of 1995);”.

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(2) Subsection (1) shall be deemed to have come into operation on 1 January 1996.

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

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79. Section 5 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the words preceding the proviso to subsection (1) of the following words:

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“The payment of any duty or of any penalty incurred under section 9 shall, save as is otherwise specially provided in this Act, be denoted by means of adhesive revenue stamps for the amount of such duty or adhesive penalty stamps for the amount of such penalty where the amount of such duty or penalty does not exceed an amount of R400, and such stamps shall be affixed to the instrument chargeable with the duty or penalty and be defaced as prescribed by this Act;”;

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

“(1A) Where the amount of duty or penalty payable exceeds an amount of R400, the payment of such duty or penalty may, having regard to the circumstances of the case, be denoted in any manner referred to in paragraph (i), (ii) or (iii) of the proviso to subsection (1).”.

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Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989 and section 7 of Act 136 of 1991

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80. Section 23 of the Stamp Duties Act, 1968, is hereby amended by the substitution for the expression “six months” in paragraph (b) of the definition of “lending arrangement” in subsection (1) of the expression “12 months”.

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Amendment of section 31 of Act 77 of 1968, as substituted by section 18 of Act 46 of 1996

81. Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution for the definition of “judge” in subsection (1) of the following definition:

“ ‘judge’ means a judge of the [Supreme] High Court and includes a judge in chambers;”.

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

82. Section 31D of the Stamp Duties Act, 1968, is hereby amended by the substitution for the words “Supreme Court” in paragraph (a) of subsection (9) of the words “High Court”.

Amendment of section 32 of Act 77 of 1968

83. Section 32 of the Stamp Duties Act, 1968, is hereby amended—

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

“The Commissioner may, subject to the provisions of subsection (4), make, or authorize to be made, a refund in respect of—”; and

(b) by the addition of the following subsection:

“(4) Where any refund contemplated in subsection (1) is due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person under this section.”.

Insertion of section 32A in Act 77 of 1968

84. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 32:

“Publication of names of offenders

32A. (1) The Commissioner may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of any offence in terms of—

(a) section 26, 27, 28A or 28B;

(b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.

(2) Every such list may specify—

(a) the name and address of the offender;

(b) such particulars of the offence as the Commissioner may think fit;

(c) the particulars of the fine or sentence imposed.”.

(2) Subsection (1) shall be deemed to have come into operation on 11 March 1998 and shall apply in respect of any person convicted on or after that date.”.

Amendment of Item 13 of Schedule 1 to Act 77 of 1968, as amended by section 12 of Act 92 of 1983 and section 12 of Act 108 of 1986

85. Item 13 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the deletion of paragraph (b) of the *Exemptions*.

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

- 86.** (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—
- (a) by the deletion of paragraph (vi);
 - (b) by the deletion of the word “and” at the end of paragraph (xv);
 - (c) by the addition of the word “and” at the end of paragraph (xvi); and
 - (d) by the addition of the following paragraph:

“(xvii) the National Housing Finance Corporation Limited.”.
- (2)(a) Subsection (1)(a) shall be deemed to have come into operation on 26 June 1998.
- (b) Subsection (1)(b), (c) and (d) shall be deemed to have come into operation on 10 May 1996.

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996 and section 24 of Act 27 of 1997

- 87.** (1) Section 2 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that the activities contemplated in paragraphs (a), (b), (c), (d) and (f) shall not be deemed to be financial services to the extent that the consideration payable in respect thereof is any fee, commission, merchant’s discount or similar charge, excluding any discounting cost.”;
 - (b) by the insertion after the definition of “long-term insurance policy” in subsection (2) of the following definition:

“(vA) ‘merchant’s discount’ means a charge made to merchants for accepting a credit or debit card as payment for the supply of goods or services, or a similar charge made by a buying organisation.”.
- (2) Subsection (1) shall come into operation on 1 March 1999.

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996 and section 34 of Act 34 of 1997

- 88.** Section 6 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraphs (c) and (d) of subsection (2) of the following paragraphs:
- “(c) **[disclosing to the Head: Central Statistical Services the names and addresses of vendors who, according to the Commissioner’s records, carry on enterprises falling within categories designated by the said Head]** disclosing to the Chief of the Central Statistical Services such information in relation to any person as may be required by such Chief in connection with the collection of statistics in carrying out the provisions of the Statistics Act, 1976 (Act No. 66 of 1976), or any regulation thereunder;
 - (d) confirming to [the recipient or intended recipient of a] any party to an agreement for the supply of goods or services whether the [supplier] other party is registered in terms of this Act or not.”.

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

89. Section 11 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (l) of subsection (2) of the following paragraph:

- “(l) the services are supplied **[for the benefit of and contractually]** to a person who is not a resident of the Republic **[and who is outside the Republic at the time the services are rendered]**, not being services which are supplied directly **[in connection with]**—
- (i) in connection with land or any improvements thereto situated inside the Republic; or
 - (ii) in connection with movable property situated inside the Republic at the time the services are rendered, except movable property which—
 - (aa) is exported to the said person subsequent to the supply of such services; or
 - (bb) forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor; or
 - (iii) to the said person or any other person, other than in circumstances contemplated in subparagraph (ii)(bb), if the said person or such other person is in the Republic at the time the services are supplied,
- and not being services which are the acceptance by any person of an obligation to refrain from carrying on any enterprise, to the extent that the carrying on of that enterprise would have occurred within the Republic; or”.

Amendment of section 15 of Act 89 of 1991, as amended by paragraph 8 of Government Notice 2695 of 8 November 1991, section 20 of Act 136 of 1992 and section 31 of Act 27 of 1997

90. Section 15 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the insertion in paragraph (b) of subsection (2) before subparagraph (i) of the following words:

“the vendor is a natural person (other than the trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons, and—”; and
- (b) by the addition to subsection (5) of the following proviso:

“Provided that where a vendor changes from a payments basis to an invoice basis for the sole reason that such vendor is not a natural person (other than a trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons, the vendor shall pay to the Commissioner the tax payable as calculated in accordance with this section in equal instalments within the period allowed under this Act for the payment of tax in respect of so many tax periods as the Commissioner may allow, the last of which shall not end on a date later than 10 March 1999.”.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996 and section 32 of Act 27 of 1997

91. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

“Provided that the Commissioner may authorise a vendor to calculate the tax payable in accordance with a method which the Minister may prescribe by regulation.”;

- (b) by the addition to subsection (2) of the following proviso:
 “Provided further that no deduction of input tax in relation to that supply or importation shall be made in respect of any tax period which ends more than five years after the end of the tax period during which the vendor for the first time became entitled to such deduction.”; and 5
- (c) by the deletion of the word “and” at the end of paragraph (h) of subsection (3) and the addition to that paragraph of the following proviso:
 “Provided that where such goods consist of second-hand goods contemplated in the proviso to paragraph (b) of the definition of ‘input tax’ in section 1, the amount determined in terms of this subsection shall not exceed the amount of transfer duty or stamp duty, as the case may be, which was or would have been payable, less any amount which has previously been deducted in terms of the provisions of subsection (3)(a)(ii) or (b)(i) of this section or section 18(4) or (5), in respect of such acquisition, original issue or registration of transfer, as the case may be;”. 10 15

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994 and section 33 of Act 27 of 1997 20

92. Section 17 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for the words preceding the proviso to subsection (1) of the following words:
 “Where goods or services are acquired or imported by a vendor partly for consumption, use or supply (hereinafter referred to as the intended use) in the course of making taxable supplies and partly for another intended use, **[and] the extent to which any tax which** has become payable in respect of the supply to him or the importation by him, as the case may be, of such goods or services or in respect of such goods under section 7(3) or **[where tax is the tax fraction of an amount or consideration in respect of a supply contemplated in]** any amount determined in accordance with paragraph (b) or (c) of the definition of ‘input tax’ in section 1, **[the extent to which the tax concerned]** is input tax, **[as contemplated in the definition of ‘input tax’ in section 1]** shall be an amount which bears to the full amount of such tax or amount, as the case may be, the same ratio (as determined in accordance with a general written ruling by the Commissioner or a written ruling given by the Commissioner to such vendor) as the intended use of such goods or services in the course of making taxable supplies bears to the total intended use of such goods or services.”; 25 30 35 40
- (b) by the deletion of the word “and” at the end of paragraph (i) of the proviso to subsection (1) and the addition of the word “and” at the end of paragraph (ii) of that proviso; and
- (c) by the addition to the proviso to subsection (1) of the following paragraph:
 “(iii) where a method for determining the ratio referred to in this subsection has been approved by the Commissioner, by way of a general written ruling or a written ruling given to such vendor, that method may only be changed with effect from a future tax period, or from such other date as the Commissioner may consider equitable.”. 45 50

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, paragraph 10 of Government Notice 2695 of 8 November 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994 and section 34 of Act 27 of 1997

93. Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the definition of symbol “D” in subsection (4) of the following definition: 5

“ ‘D’ where paragraph (c) applies, other than in respect of second-hand goods to which the proviso to paragraph (b) of the definition of ‘input tax’ in section 1 applies, represents the ratio that the amount paid, which payment reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in future) in respect of or consequent upon, whether directly or indirectly, the consideration in money for the supply of second-hand goods, bears to the total consideration in money, expressed as a percentage:”.

Amendment of section 20 of Act 89 of 1991, as amended by paragraph 11 of Government Notice 2695 of 8 November 1991, section 25 of Act 136 of 1992, section 33 of Act 97 of 1993 and section 35 of Act 27 of 1997

94. Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 20

“Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice shall be in the currency of the Republic and shall contain the following particulars:”;

(b) by the addition to subsection (4) of the following proviso: 25

“Provided that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.”;

(c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 30

“Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed R500, a tax invoice shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:”;

(d) by the addition to subsection (5) of the following proviso: 35

“Provided further that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.”;

and
(e) by the substitution for the words preceding paragraph (a) of subsection (8) of the following words: 40

“Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods or of goods as contemplated in section 8(10) to a recipient, being a registered vendor, the recipient shall, where the value of the supply is R1 000 or more, obtain and maintain a declaration by the supplier stating whether the supply is a taxable supply or not and shall further maintain sufficient records to enable the following particulars to be ascertained:”.

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996 and section 36 of Act 27 of 1997 50

95. Section 22 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) has, within a period of [36] 12 months after the expiry of the tax period within which such deduction was made, not paid the full consideration in respect of such supply.”.

Amendment of section 25 of Act 89 of 1991

96. Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph: 5

“(e) any change in the composition of the members of a partnership or joint venture:”.

Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997 10

97. Section 32 of the Value-Added Tax Act, 1991, is hereby amended by the addition to paragraph (a) of subsection (1) of the following subparagraph:

“(iv) refusing to approve a method for determining the ratio contemplated in section 17(1); or”.

Amendment of section 41 of Act 89 of 1991, as amended by paragraph 18 of Government Notice 2695 of 8 November 1991, section 32 of Act 136 of 1992, section 36 of Act 97 of 1993 and section 41 of Act 27 of 1997 15

98. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraphs (a), (b) and (c) and the words following thereon of the following paragraphs and words, respectively: 20

“(a) no amount of tax otherwise properly chargeable and payable by any person or not deductible by him under this Act, shall be recoverable by the Commissioner in respect of any past supply of goods or services or any past importation of goods if, in terms of a general written ruling by the Commissioner or a general oral ruling given by him prior to **[the promulgation of the Taxation Laws Amendment Act, 1993] 9 July 1993** which had not been withdrawn by him at the time at which the said person became contractually obliged to supply or receive such goods or services, as the case may be, no tax was payable or a deduction was allowed in respect of such supply or importation; 25

(b) no further amount of tax shall be recoverable by the Commissioner in respect of or in relation to any past supply of goods or services or any past importation of goods if, in terms of a general written ruling by the Commissioner or a general oral ruling given by him prior to **[the date of promulgation of the Taxation Laws Amendment Act, 1993] 9 July 1993** which had not been withdrawn by him at the time of such supply or importation, the tax payable or deductible in respect of such supply or importation had been calculated and paid or had been deducted in accordance with such ruling, as the case may be; 30

(c) where any written decision or, prior to **[the date of promulgation of the Taxation Laws Amendment Act, 1993] 9 July 1993** an oral decision has been given by the Commissioner— 40

- (i) to the effect that any person is required or not required to be registered as a vendor in terms of the provisions of this Act; or
- (ii) as to the taxable or non-taxable nature of any supply of goods or services by any person or of the importation of goods by any person (including any decision as to the applicability of any exemption or rate of zero per cent) or as to the deductibility or non-deductibility in terms of section 16(3) of tax in respect of the supply to any person of goods or services or the importation by any person of goods, 45

and such decision is subsequently withdrawn, such withdrawal shall, as respects any contractual obligation incurred in accordance with the decision given by the Commissioner by the person concerned before such withdrawal 50

to supply or receive the goods or services concerned, not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or his entitlement or otherwise to a deduction of tax, as determined in accordance with such decision, as the case may be, provided such decision was accepted by the said person and all the material facts were known to the Commissioner when the decision was given;”.

Amendment of section 43 of Act 89 of 1991

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

- “(1) The Commissioner may, in the case of any vendor—
- (a) who has been convicted of any offence under this Act or who has repeatedly failed to pay amounts of tax due **[to]** by him or to carry out other obligations imposed upon him by this Act; or
 - (b) who is under the management or control of a person who is or was a vendor contemplated in paragraph (a); or
 - (c) who is under the management or control of a person, where that person is or was managing or controlling another person who is or was a vendor contemplated in paragraph (a),
- by written notice to such vendor require him, within such period as the Commissioner may allow, to furnish to or deposit with the Commissioner security for the payment of any tax, additional tax, penalty or interest which has or may become payable by **[the]** such vendor in terms of this Act.”.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996 and section 42 of Act 27 of 1997

- 100.** Section 44 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for paragraph (i) of the proviso to subsection (1) of the following paragraph:

“(i) the Commissioner shall not make a refund under this subsection unless the claim for the refund is **[made]** received by the Commissioner within five years after the end of the said tax period; or”; and
 - (b) by the substitution for subsection (6) of the following subsection:

“(6) Where any refund contemplated in this section is due to any vendor who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed in terms of this Act or any other law administered by the Commissioner within the period prescribed for payment of such amount, the Commissioner may set off against such amount which such vendor has failed to pay, the amount which has become refundable under this section or any interest which has become payable to the vendor in terms of section 45.”.

Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992, section 4 of Act 61 of 1993, section 24 of Act 20 of 1994 and section 43 of Act 27 of 1997

- 101.** Section 45 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for subparagraphs (aa) and (bb) and the words following thereon of paragraph (i) of the proviso to subsection (1) of the following subparagraphs and words, respectively:

“(aa) the vendor rectifies the return and satisfies the Commissioner in writing that the incompleteness or defectiveness of the return does not affect the amount refundable; or

(bb) information is received by the Commissioner **[makes]** to enable him to

- make an assessment upon the vendor reflecting the amount properly refundable to the vendor; **[whichever date is earlier]**”;
- (b) by the substitution for paragraphs (iA) and (ii) of the proviso to subsection (1) of the following paragraphs:
- “(iA) where the vendor is in default in respect of any of his obligations under this Act to furnish a return for any tax period **[preceding the said tax period]** as required by this Act, the said period of 21 business days shall be reckoned from the date on which any such outstanding return or returns furnished by the vendor as required by this Act are received by such a Receiver of Revenue;
- (ii) where the Commissioner is prevented from satisfying himself as to the amount refundable in terms of section 44(1) by reason of not being able to gain access to the books and records of the vendor concerned after having, within a reasonable time, made a request by registered post, facsimile transmission, electronic means or personal delivery, to the vendor for access to such books and records during the period of 21 business days contemplated in this subsection, the said period of 21 business days shall be suspended from the date of despatch of such request by registered post, facsimile transmission, electronic means or the date of delivery of the personal delivery, until the date on which such access is granted;”.

Amendment of section 55 of Act 89 of 1991, as amended by section 35 of Act 136 of 1992 and section 38 of Act 97 of 1993

- 102.** Section 55 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) a record of all goods and services supplied by or to the vendor showing the goods and services, the rate of tax applicable to the supply and the suppliers or their agents, in sufficient detail to enable the goods and services, the rate of tax, the suppliers or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, debit notes, bank statements, deposit slips, stock lists and paid cheques relating thereto: Provided that a vendor’s records do not have to show the rate of tax where the vendor has been authorised by the Commissioner to calculate the tax payable by him in accordance with a method prescribed by regulation, as contemplated in section 16(1);”.

Amendment of section 62 of Act 89 of 1991

- 103.** Section 62 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The Commissioner **[shall]** may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of **[offences under]** any offence in terms of—
- (a) section 58 or 59(1);
- (b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.”; and
- (b) by the substitution for paragraph (e) of subsection (2) of the following paragraph:
- “(e) the amount (if any) of the additional tax imposed and the particulars of the fine or sentence imposed.”.

Amendment of Schedule 2 to Act 89 of 1991, as amended by section 49 of Act 136 of 1991, paragraph 25 of Government Notice 2695 of 8 November 1991, section 44 of Act 136 of 1992, section 45 of Act 97 of 1993 and section 33 of Act 20 of 1994

- 104.** PART B of Schedule 2 to the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for Items 9 and 10 of paragraph 1 of the following Items, respectively: 5
- “Item 9 Milk powder: unflavoured, being the powder obtained by the removal of water from milk and which falls under the following classifications determined by the Minister of Agriculture under the **[Marketing Act, 1968 (Act No. 59 of 1968)]** Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), or any regulation under that Act: 10
- High-fat milk powder
Full-fat milk powder
Medium-fat milk powder 15
Low-fat milk powder
Fat-free milk powder,
provided that the fat or protein content of such milk powder consists solely of milk fat or milk protein.
- Item 10 Dairy powder blend, being any dairy powder blend which falls under the following classifications determined by the Minister of Agriculture under the **[Marketing Act, 1968 (Act No. 59 of 1968)]** Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), or any regulation under that Act: 20
- High-fat dairy powder blend 25
Full-fat dairy powder blend
Medium-fat dairy powder blend
Low-fat dairy powder blend
Fat-free dairy powder blend.”; and
- (b) by the substitution for Item 16 of paragraph 1 of the following Item: 30
- “Item 16 Cultured milk, being cultured milk as classified under the **[Marketing Act, 1968 (Act No. 59 of 1968)]** Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), with the following class designation: 35
- Cultured high-fat milk
Cultured full-fat milk
Cultured low-fat milk
Cultured fat-free milk.”.

Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993, section 4 of Act 168 of 1993, section 34 of Act 20 of 1994, section 6 of Act 37 of 1995, section 34 of Act 37 of 1995 and section 55 of Act 27 of 1997 40

- 105.** Section 60 of the Income Tax Act, 1993, is hereby amended by the substitution in the Afrikaans text for subsection (3) of the following subsection:
- “(3) Die registrasie van oordrag van enige uitkeerbare aandele in die naam van ’n kwalifiserende aandeelhouer ooreenkomstig ’n uitkering *in specie* van uitkeerbare aandele in die loop van ’n ontbondelingstransaksie word van seëlreg vrygestel.”. 45

Amendment of section 8 of Act 36 of 1996, as amended by section 52 of Act 28 of 1997

- 106.** (1) Section 8 of the Income Tax Act, 1996, is hereby amended by the substitution for the expression “section 13” in paragraph (b) of subsection (2) of the expression “section 12”. 50
- (2) Subsection (1) shall be deemed to have come into operation on 1 March 1998.

Amendment of section 2 of Act 38 of 1996

107. (1) Section 2 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution for the expression “17 per cent” of the expression “25 per cent”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1998.

Short title and commencement

5

108. (1) This Act shall be called the Taxation Laws Amendment Act, 1998.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment 10 ending on or after 1 January 1999.

SCHEDULE 1

RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 1999 AND 30 JUNE 1999, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 1999

(SECTION 18)

1. The rates of normal tax referred to in section 18 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 R31 000	19 per cent of each R1 of the taxable income;
exceeds R31 000 but does not exceed R46 000	R5 890 plus 30 per cent of the amount by which the taxable income exceeds R31 000;
“ R46 000 ” “ ” “ ” R60 000	R10 390 plus 39 per cent of the amount by which the taxable income exceeds R46 000;
“ R60 000 ” “ ” “ ” R70 000	R15 850 plus 43 per cent of the amount by which the taxable income exceeds R60 000;
“ R70 000 ” “ ” “ ” R120 000	R20 150 plus 44 per cent of the amount by which the taxable income exceeds R70 000;
“ R120 000	R42 150 plus 45 per cent of the amount by which the taxable income exceeds R120 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	35 per cent of each R1 of the taxable income;
exceeds R100 000	R35 000 plus 45 per cent of the amount by which the taxable income exceeds R100 000.

2. The rates of normal tax referred to in section 18 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) and (f)), 35 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, 42 cents;
- (b) 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:

$$y = 43 - \frac{215}{x}$$

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:

$$y = 51 - \frac{255}{x}$$

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);

- (c) 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 35 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from gold mining for the period from 1 July 1916 to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (d) on each rand of the taxable income derived by any company from carrying on long-term insurance business in respect of—
 - (i) its individual policyholder fund, 30 cents; and
 - (ii) its company policyholder fund and corporate fund, 35 cents;
- (e) on each rand of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d) and (f)) 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, 40 cents;
- (f) 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 such section, zero cents:

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

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

4. For the purposes of—

- (a) paragraph 1 a “special trust” means a trust created solely for the benefit of a person who suffers from—
 - (i) any mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or
 - (ii) any serious physical disability,
where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person; and
- (b) paragraph 2 income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any 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 75)

TARIFF ITEM	TARIFF HEADING	DESCRIPTION	RATE OF DUTY	
			EXCISE	CUSTOMS
104.00		By the substitution for tariff item 104.00 of the following:		
“104.00		PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO		
104.01	19.01	MALT EXTRACT; FOOD PREPARATIONS OF FLOUR, MEAL, STARCH OR MALT EXTRACT, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS, OF LESS THAN 50 PER CENT, NOT ELSEWHERE SPECIFIED OR INCLUDED; FOOD PREPARATIONS OF GOODS OF HEADINGS NOS. 04.01 TO 04.04, NOT CONTAINING COCOA POWDER OR CONTAINING COCOA POWDER IN A PROPORTION, BY MASS, OF LESS THAN 10 PER CENT, NOT ELSEWHERE SPECIFIED OR INCLUDED:		
.10		Preparations based on sorghum flour, put up for making beverages	33c/kg	33c/kg
104.05	22.01	WATERS, INCLUDING NATURAL OR ARTIFICIAL MINERAL WATERS AND AERATED WATERS, NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER NOR FLAVOURED; ICE AND SNOW		
	22.02	WATERS, INCLUDING MINERAL WATERS AND AERATED WATERS, CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED, AND OTHER NON-ALCOHOLIC BEVERAGES (EXCLUDING FRUIT OR VEGETABLE JUICES OF HEADING NO. 20.09):		
.10		Mineral waters, including spa waters and aerated waters, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	14,83c/l	15,98c/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)	14,83c/l	15,98c/l
.30		Non-alcoholic beverages not elsewhere specified or included in this tariff item, put up in closed bottles or other closed containers ready for drinking without dilution (excluding beverages packed in plastic tubes or similar containers and which are normally consumed in a frozen state)	14,83c/l	15,98c/l

TARIFF ITEM	TARIFF HEADING	DESCRIPTION	RATE OF DUTY	
			EXCISE	CUSTOMS
104.10	22.03	BEER MADE FROM MALT WITH AN ALCOHOL CONTENT BY VOLUME:		
.10		Exceeding 0,5% but not exceeding 1,5%	7 597c/ 100l	7 597c/ 100l
.20		Exceeding 1,5% but not exceeding 2,5%	8 282c/ 100l	8 282c/ 100l
.30		Exceeding 2,5% but not exceeding 3,5%	8 968c/ 100l	8 968c/ 100l
.40		Exceeding 3,5% but not exceeding 4,5%	9 653c/ 100l	9 653c/ 100l
.50		Exceeding 4,5% but not exceeding 5,5%	10 339c/ 100l	10 339c/ 100l
.60		Exceeding 5,5% but not exceeding 6,5%	11 024c/ 100l	11 024c/ 100l
.70		Exceeding 6,5% but not exceeding 7,5%	11 709c/ 100l	11 709c/ 100l
.80		Exceeding 7,5%	12 395c/ 100l	12 395c/ 100l
104.15	22.04	WINE OF FRESH GRAPES, INCLUDING FORTIFIED WINES; GRAPE MUST, OTHER THAN THAT OF HEADING NO. 20.09		
	22.05	VERMOUTHS AND OTHER WINE OF FRESH GRAPES FLAVOURED WITH PLANTS OR AROMATIC SUBSTANCES		
	22.06	OTHER FERMENTED BEVERAGES (FOR EXAMPLE, CIDER, PERRY AND MEAD):		
.05		Sorghum beer (excluding beer made from preparations based on sorghum flour)	745c/100l	745c/100l
.10		Unfortified still wine	6 100c/ 100l	6 100c/ 100l
.40		Fortified still wine	13 800c/ 100l	13 800c/ 100l
.50		Other still fermented beverages, unfortified	10 000c/ 100l	10 000c/ 100l
.60		Other still fermented beverages, fortified	18 160c/ 100l	18 160c/ 100l
.70		Sparkling wine	16 900c/ 100l	16 900c/ 100l
.80		Other fermented beverages (excluding sorghum beer)	21 600c/ 100l	21 600c/ 100l
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; COMPOUND ALCOHOLIC PREPARA-		

TARIFF ITEM	TARIFF HEADING	DESCRIPTION	RATE OF DUTY	
			EXCISE	CUSTOMS
		TIONS OF A KIND USED FOR THE MANUFACTURE OF BEVERAGES:		
.10		Wine spirits, manufactured in the Republic by the distillation of wine	270 000c/ 100l of absolute alcohol	—
.15		Spirits, manufactured in the Republic by the distillation of any sugar cane product	270 000c/ 100l of absolute alcohol	—
.25		Spirits, manufactured in the Republic by the distillation of any grain product	270 000c/ 100l of absolute alcohol	—
.29		Other spirits, manufactured in the Republic	270 000c/ 100l of absolute alcohol	—
.60		Imported spirits of any nature, including spirits in imported spirituous beverages (excluding liqueurs, cordials and similar spirituous beverages containing added sugar) and in compound alcoholic preparations of an alcoholic strength exceeding 1,713 per cent alcohol by volume	—	260 387c/ 100l of absolute alcohol or 111 966c/ 100l
.70		Spirits of any nature in imported liqueurs, cordials and similar spirituous beverages containing added sugar, with or without flavouring substances	—	260 387c/ 100l of absolute alcohol
104.30	24.02	CIGARS, CHEROOTS, CIGARILLOS AND CIGARETTES, OF TOBACCO OR TOBACCO SUBSTITUTES		
	24.03	OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES "HOMOGENISED" OR "RECONSTITUTED" TOBACCO EXTRACTS AND ESSENCES:		
.10		Cigars	868,0c/kg net	911,0c/kg net
.20		Cigarettes	102c/10 cigarettes	102c/10 cigarettes
		Plus, in respect of cigarettes the mass of the tobacco content of which exceeds 1,5 kg/1 000 cigarettes	3 798c/kg tobacco content	3 798c/kg tobacco content
.30		Cigarette tobacco	128c/50g or fraction thereof plus 493c/ kg tobacco	128c/50g or fraction thereof plus 493c/ kg tobacco
		Plus a suspended duty of:		
		(i) In operation	Nil	Nil
		(ii) Maximum rate	169c/kg tobacco	169c/kg tobacco
.40		Pipe tobacco in immediate packings of a content of less than 5 kg	938c/kg net	938c/kg net
.50		Pipe tobacco in immediate packings of a content of not less than 5 kg	902c/kg net	902c/kg net"