

- (e) by the substitution for the definition of “lid” in subsection (1) of the Afrikaans text by the following definition:
 “lid’ ’n persoon wat as ’n lid van ’n [effektebeurs] aandelebeurs toegelaat is;”.

Insertion of section 2A in Act 32 of 1948

3. The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 2:

“2A. Notice of variation of rate of tax.—(1) The Minister may by notice in the *Gazette* make known for general information that in terms of a taxation proposal tabled by him in the National Assembly, the rate of tax specified in section 2 is to be increased or decreased to a rate set forth in that notice and proposal.

(2) The increased or decreased rate of tax so set forth shall, until an Act of Parliament is promulgated in the *Gazette* by which effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of tax in respect of every purchase of marketable securities through the agency of or from a member on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased rate of tax, as the case may be: Provided that where no Act of Parliament to give effect to such proposal or in which other provision is made is promulgated within six months from the date of publication of such notice, the increased or decreased rate so set forth shall lapse on the last day of the six month period.

(3) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (1), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein.”.

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

4. Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended—

- (a) by the insertion after paragraph (a) of the following paragraph:
“(b) in respect of the purchase of marketable securities that are acquired in terms of the provisions of section 85 of the Companies Act, 1973 (Act No. 61 of 1973);”; and

(b) by the substitution for paragraph (d) of the Afrikaans text of the following paragraph:

“(d) ten opsigte van die koop van enige rentedraende skuldbriewe, met inbegrip van skuldbriefeffekte, skuldbriefverbande en enige ander sekuriteite van ’n regs persoon, hetsy dit ’n las teen die bates van die regs persoon uitmaak al dan nie, wat deur ’n **[effektebeurs] aandelebeurs** of deur ’n finansiële beurs soos omskryf in die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989), genoteer is.”.

Amendment of section 6 of Act 32 of 1948, as substituted by section 2 of Act 97 of 1993 and amended by section 7 of Act 37 of 1996

5. (1) Section 6 of the Marketable Securities Tax Act, 1948, is hereby amended—

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

“Where, in addition to any amount of tax which is payable by any person in terms of this Act, an amount of penalty or interest is payable by him in terms of the provisions of this Act, any payment made by that person **[on or after 1 April 1994]** in respect of such tax, **[or]** penalty or interest, which is less than the total amount due by him in respect of such tax, **[and]** penalty and interest shall for the purposes of this Act be deemed to be made—”;

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

“(b) to the extent that such payment exceeds the amount of such penalty, in respect of such **[tax] interest; and**”;

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

“(c) to the extent that such payment exceeds the amount of such penalty and interest, in respect of such tax.”.

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

Amendment of section 10 of Act 32 of 1948, as amended by section 7 of Act 37 of 1996 and section 3 of Act 46 of 1997

6. (1) Section 10 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for the words following paragraph (c) of subsection (1) of the following words:

“shall be guilty of an offence and liable on conviction to a fine **[not exceeding two hundred and fifty pounds]** or to imprisonment for a period not exceeding **[twelve months] two years** or to both such fine and such imprisonment.”.

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

Insertion of section 2A in Act 40 of 1949

7. The following section is hereby inserted in the Transfer Duty Act, 1949, after section 2:

“2A. Notice of variation of rate of transfer duty.—(1) The Minister may by notice in the *Gazette* make known for general information that in terms of a taxation proposal tabled by him in the National Assembly, the rate of duty specified in section 2 is to be increased or decreased to a rate set forth in that notice and proposal.

(2) The increased rate of duty so set forth shall, until an Act of Parliament is promulgated in the *Gazette* by which effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of duty in respect of—

(a) any property acquired by any person by way of a transaction or in any other manner; or

(b) the renunciation of an interest in or restriction upon the use or disposal of property,

on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased rate of duty, as the case may be: Provided that where no Act of Parliament to give effect to such proposal or in which other provision is made is promulgated within six months from the date of publication of such notice, the increased or decreased rate so set forth shall lapse on the last day of the six month period.

(3) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (1), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein.”.

Amendment of section 8 of Act 40 of 1949, as amended by 2 of Act 81 of 1985

8. Section 8 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subparagraph (i) of paragraph (c) of the Afrikaans text by the following subparagraph:

“(i) in die geval van aandeel of sekuriteite wat op die datum van die transaksie op enige erkende **[effektebeurs]** aandeelbeurs genoteer word, hulle middelmarkprys op daardie datum is; of”.

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

9. Section 1 of the Estate Duty Act, 1955, is hereby amended by the substitution of the definition of “familiemaatskappy” in subsection (1) of the Afrikaans text of the following definition:

“‘familiemaatskappy’, met berekking tot ’n oorlede persoon, ’n maatskappy (behalwe ’n maatskappy waarvan die aandele op ’n erkende **[effektebeurs]** aandelebeurs gekwoteer word) wat op enige tersaaklike tydstip regstreeks of onregstreeks, hetsy deur ’n meerderheid van die aandele daarvan of ’n ander belang daarin of op watter ander wyse ook al, deur die oorledene of deur die oorledene en een of meer van sy familielede beheer is of kon geword het;”.

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

10. Section 5 of the Estate Duty Act, 1955, is hereby amended by the substitution for the words preceding subparagraph (i) of paragraph (f)*bis* of subsection (1) of the Afrikaans text of the following words:

“’n die geval van aandele in ’n maatskappy wat nie op enige **[effektebeurs]** aandelebeurs gekwoteer word nie, die waarde van sodanige aandele in die besit van die oorledene op die datum van sy dood soos bepaal, behoudens die bepalings van artikel agt, deur een of ander deur die Kommissaris aangestelde onpartydige persoon onderworpe aan die volgende bepalings, te wete—“.

Amendment of section 24 of Act 45 of 1955, as substituted by section 15 of Act 77 of 1962 and amended by section 12 of Act 77 of 1964, section 2 of Act 104 of 1976, section 8 of Act 86 of 1987, section 10 of Act 97 of 1993 and section 8 of Act 27 of 1997

11. Section 24 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) The provisions of subsections (8), (9), (10), (11), (12), (14), (15), (16) and (17) of section 83, and of sections 84, 85 **[86]** and 86A, of the Income Tax Act, 1962, and any regulations made under that Act and relating to any appeal to the special court referred to in subsection (4) and to any appeal in terms of the said **[sections 86 and]** section 86A, shall *mutatis mutandis* apply with reference to any appeal under this section.“.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85

of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997 and section 19 of Act 30 of 1998

12. Section 1 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for paragraph (b) of the definition of “benefit fund” of the following paragraph:
- “(b) any medical scheme registered under the provisions of the Medical Schemes Act, **[1967 (Act 72 of 1967)]** 1998 (Act No. 131 of 1998); or”;
- (b) by the substitution for paragraph (c) of the definition of “dividend” of the following paragraph:
- “(c) in the event of the partial reduction or redemption of the capital of a company, including the acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973), so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the cash equivalent of—
- (i) the amount by which the nominal value of the shares of that shareholder is reduced; or
- (ii) the nominal value of the shares so acquired from such shareholder,
as the case may be; and”;
- (c) by the substitution for paragraph (f) of the definition of “dividend” of the following paragraph:
- “(f) subject to the provisions of the **[second]** first proviso to this definition, any cash and the value of any asset given to a shareholder to the extent to which the cash and the value of the asset represents a reduction of the share premium account of a company; or”;
- (d) by the deletion of paragraph (g) of the definition of “dividend”;
- (e) by the substitution for paragraph (h) of the definition of “dividend” of the following paragraph:
- “(h) the nominal value of any capitalization shares awarded to shareholders as part of the equity share capital of a company, if^¾
- (i) **such shares are or were awarded on or before 30 June 1975 and during the period of ten years ending the day before the date of such award the company has not made any partial reduction of its paid-up share capital involving a distribution to shareholders of cash or other assets; or**

- (ii) **such shares are awarded on or after 1 July 1975];**;
- (f) by the deletion of the first proviso to the definition of “dividend”;
- (g) by the substitution for the words preceding paragraph (i) of the second proviso to the definition of “dividend” of the following words:
“Provided **[further]** that, for the purposes of this definition—”;
- (h) by the substitution for the words preceding subitem (aa) of paragraph (iii) of the second proviso to the definition of “dividend” of the following words:
“if, in the event of the subsequent partial reduction or redemption of the share capital (including any share premium) of the company, including any acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973), or the reconstruction of the company, any cash or asset is given to shareholders and such cash or asset (or a portion thereof) represents a return of share capital or share premium, the amount of share capital or share premium so returned—”;
- (i) by the substitution for item (bb) of paragraph (eA) of the definition of gross income” of the following item:
(bb) in the case of a conversion, of the amount representing the amount converted for the benefit or ultimate benefit of the member or the dependants or nominees of the deceased member, and such amount shall be deemed to have been received by or accrued to or in favour of such member, dependants or nominees, as the case may be: Provided that where any endorsement has been made in the records of the fund which provides that any part of such amount shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), such part shall for the purposes of this paragraph be deemed to be an amount converted for the benefit or ultimate benefit of such member; or:”;
- (j) by the substitution for subparagraph (iii) of paragraph (g) of the definition of “gross income” of the following subparagraph:
“(iii) for the use or right of use of any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, **[1967 (Act 57 of 1967)] 1993 (Act No. 195 of 1993)**, or any trade mark as defined in the Trade Marks Act, **[1963 (Act 62 of 1963)] 1993 (Act No. 194 of 1993)**, or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature;” and
- (k) by the substitution for the definition of “trade” of the following definition:
“‘trade’ includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, **[1967 (Act 57 of 1967)] 1993 (Act No. 195 of 1993)**, or any trade mark as defined in the Trade Marks Act, **[1963 (Act 62 of 1963)] 1993 (Act No. 194 of 1993)**, or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any other property which is of a similar nature;”.

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

(b) Subsection (1)(i) shall—

- (i) in so far as it inserts the words preceding the proviso, be deemed to have come into operation on 12 March 1997, and shall apply in respect of any conversion on or after that date; and
- (ii) in so far as it adds the proviso, come into operation on the date of promulgation of this Act and shall apply in respect of any amount converted on or after that date.

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997 and section 21 of Act 30 of 1998

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

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

“the provisions of this subsection shall not be construed as preventing the Commissioner from disclosing to the **[Chief of the Central Statistical Services] Statistician-General** such information in relation to any person as may be required by such **[Chief] Statistician-General** in connection with the collection of statistics in complying with the provisions of the Statistics Act, **[1976 (Act 66 of 1976)] 1999 (Act No. 6 of 1999)** or any **[regulation] rule made** thereunder;

(b) by the substitution for subsection (1A) of the following subsection:

“(1A) The **[Chief of the Central Statistical Services] Statistician-General** or any person acting under the direction and control of such **[Chief] Statistician-General**, 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.”; and

(c) by the addition to the proviso to subsection (1) of the following paragraph:

“(d) the provisions of this subsection shall not be construed as preventing the Commissioner from disclosing to the Board administering the National Student Financial Aid Scheme, any information relating to the name and address of the employer of any borrower to whom any loan or bursary has been granted in terms of such scheme.”.

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

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

- (a) by the addition of the word “or” at the end of paragraph (b) of subsection (1);
- (b) by the addition of the following paragraph to subsection (1):
“(c) any income payable to such resident from the Republic, where such income is deemed to be from a source within the Republic in terms of the provisions of paragraphs (d), (d)bis and (f) of section 9(1).”; and
- (c) by the substitution for the words following paragraph (b) and preceding subparagraph (i) of subsection (1) of the following words:
 “a rebate equal to the sum of any taxes on income proved to be payable, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) by? ”.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 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, section 6 of Act 21 of 1995 and section 23 of Act 30 of 1998

15. Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (i) of paragraph (c) of subsection (2C) of the following subparagraph:

- “(i) registered holder of a patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, **[1967 (Act 57 of 1967) 1993 (Act No. 195 of 1993)]**, or any trade mark as defined in the Trade Marks Act, **[1963 (Act 62 of 1963)] 1993 (Act No. 194 of 1993)**”.

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

16. (1) Section 8 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subparagraphs (i) and (ii) of paragraph (e) of subsection (1) of the following subparagraphs:
 “(i) the President, Deputy President, a Minister, Deputy Minister, a member of [Parliament] the National Assembly, a permanent

- delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature;
- (ii) any member of **[any institution or body contemplated in section 84(1)(f) of the Republic of South Africa constitution Act, 1961 (Act No. 32 of 1961)]** a Municipal Council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders; and”;
- (b) by the substitution for paragraph (f) of subsection (1) of the following paragraph:
- “(f) Where it is expected of any person contemplated in paragraph (e)(i) to defray any expenditure referred to in paragraph (d) out of his salary received as the holder of any public office, an amount equal to a portion (which shall be determined **[from time to time by the Minister by notice in the Gazette]** by the National Assembly or the President, as the case may be, as provided for in the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998)) of such salary shall for the purposes of paragraph (d) be deemed to be an allowance granted to such person.”.
- (2)(a) Subsection (1)(a) shall—
- (i) in so far as it amends subparagraph (i) of paragraph (e), be deemed to have come into operation on 1 March 1999; and
- (ii) in so far as it amends subparagraph (ii) of paragraph (e), come into operation on 1 March 2000.
- (b) Subsection (1)(b) shall be deemed to have come into operation on 1 March 1999.

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, section 7 of Act 28 of 1997 and section 25 of Act 30 of 1998

- 17. Section 9 of the Income Tax Act, 1962, is hereby amended—**
- (a) by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:
- “(i) any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, **[1967 (Act 57 of 1967)]** 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, **[1963 (Act 62 of 1963)]** 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any model, pattern, plan, formula or

- process or any other property or right of a similar nature; or”;
and
- (b) by the substitution for paragraph (fA) of subsection (1) of the following paragraph:
“(fA) any services rendered by such person to, or work or labour done by such person for, any other person upon, beneath or above the continental shelf referred to in section [7] 8 of the **[Territorial Waters Act, 1963 (Act 87 of 1963)] Maritime Zones Act, 1994 (Act No. 15 of 1994)**, in the course of any operations connected with operations carried on by any person under any prospecting permit or mining authorization issued or which may be issued under the Minerals Act, 1991 (Act 50 of 1991), or any prospecting or mining lease granted under the Mining Rights Act, 1967 (Act 20 of 1967), or under any sublease granted or which may be granted under any such lease, wheresoever payment for such services or work or labour is or is to be made;”.

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, section 7 of Act 36 of 1996 and section 26 of Act 30 of 1998

18. (1) Section 9B 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:
“For the purposes of this section 'affected share', in relation to any taxpayer, means a share listed on a **[licensed]** stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act 1 of 1985), which has been disposed of by the taxpayer **[and of which he] who immediately prior to such disposal had been the owner of such share as a listed share** for a continuous period of at least five years.”; and
- (b) by the insertion after subsection (4) of the following subsection:
“(5) The provisions of this section shall not apply to any affected shares where such shares constitute shares which were deemed to be trading stock of the taxpayer in terms of section 24A(2)(a) of this Act.”.
- (2) Subsection (1)(b) shall come into operation on the date of promulgation of this Act and shall apply in respect of any share acquired on or after that date.

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

19. Section 9D of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the words following paragraph (b) of subsection (4) of the following words:
“there shall be included in the income of such resident by whom such donation, settlement or other disposition was made, so much of the

- amount of any investment income as is attributable to such donation settlement or other disposition.”;
- (b) by the substitution for paragraph (a) of the second proviso to subsection (8) of the following paragraph:
“(a) any **[such]** deductions or allowances allowable in terms of this subsection shall be limited to the amount of such investment income; and”;
- (c) by the substitution for the words preceding the proviso to paragraph (a) of subsection (9) of the following words:
“where the foreign tax actually paid or payable without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) in any country other than the Republic, relating to the proportional amount contemplated in subsection (2) or (4), after taking into consideration any deductions or allowances under the taxation provisions of such other country determined at the ratio as contemplated in subsection (2) or (4), as the case may be, is more than 85 per cent of the normal tax payable in the Republic.”.

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

- 20.** (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for item (bb) of subparagraph (vii) of paragraph (cl) of subsection (1) of the following item:
“(bb) in securities listed on a **[licensed]** stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985);”;
- (b) by the substitution for item (bb) of subparagraph (iv) of paragraph (cJ) of subsection (1) of the following item:
“(bb) in securities listed on a **[licensed]** stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985);”;

- (c) by the substitution for subparagraph (v) of paragraph (cM) of subsection (1) of the following subparagraph:
- “(v) **[at least one of the members is a local authority]** the business directly connected with the sole or principal object was previously carried on by a municipal council and the control of the company is exercised by such municipal council;”;
- (d) by the substitution for paragraph (e) of subsection (1) of the following paragraph:
- “(e) any levy received by or accrued to—
- (i) any body corporate established in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), from its members;
 - (ii) a share block company established in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from its shareholders; or
 - (iii) any other association of persons (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), and any co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), and any close corporation and any trust, but including a company incorporated under section 21 of the Companies Act, 1973), from its members, where the Commissioner is satisfied that such association of persons has been formed solely for purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable:
- Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would be become payable by any person under this Act or any other Act administered by the Commissioner;”;
- (e) by the substitution for subitem (B) of item (bb) of subparagraph (ii) of paragraph (fA) of subsection (1) of the following subitem:
- “(B) in securities listed on a **[licensed]** stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985); or”;
- (f) by the addition to subparagraph (i) of paragraph (k) of subsection (1) of the following item:
- “(cc) to any dividend received by or accrued to or in favour of any person where such dividend constitutes or forms part of any consideration paid or payable to such person in respect of the disposal of shares (other than affected shares in respect of which the taxpayer has, in terms of the provisions of section 9B, elected the amount received or accrued on disposal to be

deemed to be of a capital nature), which were held as trading stock by such person in a company and such shares were acquired by such company in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973).”;

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

“(o) any remuneration derived by any person as an officer or crew member of a ship engaged—

(i) in the international transportation for reward of passengers or goods; or

(ii) in the prospecting (including surveys and other exploratory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the continental shelf of the Republic as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), where such officer or crew member is employed on board such ship solely for purposes of the ‘passage’ of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981),

if such person was outside the Republic for a period or periods exceeding 183 days in aggregate during the year of assessment;” and

(h) by the deletion of subparagraph (xi) of paragraph (t).

(2)(a) Subsection (1)(d) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date.

(b) Subsection (1)(f) shall be deemed to have come into operation on 30 June 1999.

(c) Subsection (1)(g) shall come into operation on 1 March 2000.

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

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995 and section 11 of Act 28 of 1997

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

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

“annuity contract” means an agreement concluded between an insurer in the course of his insurance business and a **[natural person (hereinafter referred to as the]** purchaser, in terms of which—”;

(b) by the insertion after the definition of “expected return” in subsection (1) of the following definitions:

“purchaser”, in relation to an annuity contract means—

(i) any natural person and includes such person’s deceased or insolvent estate; or

- (ii) a curator bonis of, or a trust created solely for the benefit of, any natural person where the High Court has declared such person to be of unsound mind and incapable of managing his or her own affairs and such Court has ordered the appointment of such curator or creation of such trust, as the case may be;
- 'statutory actuary' means an actuary appointed in accordance with section 20(1) or 21(1)(b) of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);";
- (c) by the deletion of the definition of "valuator" in subsection (1);
- (d) by the substitution for subsection (2) of the following subsection:
 "(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser **[or his deceased or insolvent estate]** or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of annuity contract in subsection (1)), in accordance with subsection (3) to represent the capital element of such amount."; and
- (e) by the substitution for the word "valuator" wherever it may occur in subsections (4), (5) and (6) of the words "statutory actuary".
- (2) Subsections (1)(a) and (b) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount payable on or after that date.

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

- 22. Section 11 of the Income Tax Act, 1962, is hereby amended—**
- (a) by the substitution for subparagraph (iii) of paragraph (f) of the following subparagraph:
 "(iii) the right of use of any patent as defined in the Patents Act, 1978 (Act 57 of 1978), or any design as defined in the Designs Act, **[1967 (Act 57 of 1967)]** 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, **[1963 (Act 62 of 1963)]** 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or of any other property which is of a similar nature, if such patent, design, trade

- mark, copyright or other property is used for the production of income or income is derived therefrom; or”;
- (b) by the substitution for subparagraphs (i) and (ii) of paragraph (gA) of the following subparagraphs:
- “(i) in devising or developing any invention as defined in the Patents Act, 1978 (Act 57 of 1978), or in creating or producing any design as defined in the Designs Act, **[1967 (Act 57 of 1967)] 1993 (Act No. 195 of 1993)**, or any trade mark as defined in the Trade Marks Act, **[1963 (Act 62 of 1963)] 1993 (Act No. 194 of 1993)**, or any copyright as defined in the Copyright Act, 1978 (Act 98 of 1978), or any other property which is of a similar nature; or
- (ii) in obtaining any patent or the restoration of any patent under the Patents Act, **[1952] 1978**, or the registration of any design under the Designs Act, **[1967] 1993**, or the registration of any trade mark under the Trade Marks Act, **[1963] 1993**; or”;
- (c) by the substitution of item (aa) of the proviso to paragraph (gA) of the following item:
- “(aa) where such expenditure exceeds R3 000, and was incurred—
- (A) on or before ..., the allowance shall not exceed for any one year such portion of the amount of the expenditure as is equal to such amount divided by the number of years, which in the opinion of the Commissioner, represents the probable duration of use of the invention, patent, design, trade mark, copyright, other property or knowledge, or **[one twenty-fifth] four per cent** of the said amount, whichever is the greater; and
- (B) after ..., the allowance shall not for any one year exceed and amount equal to—
- (AA) five per cent of the amount of the expenditure in the case of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or
- (BB) ten per cent of the amount of the expenditure in the case of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted;”;
- (d) by the addition to the proviso to paragraph (gA) of the following item:
- “(ee) no allowance shall be made in respect of any expenditure incurred by such taxpayer on or after ..., in respect of the creation, production, registration or acquisition of any trade mark or property of a similar nature or any knowledge connected with the use of such trade mark or the right to have such knowledge imparted;”;
- (e) by the substitution for paragraph (gB) of the following paragraph:
- “(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other

provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the extension of the term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the extension of the registration period of any design under the Designs Act, **[1967 (Act 57 of 1967)]** 1993 (Act No. 195 of 1993), or the renewal of the registration of any trade mark under the Trade Marks Act, **[1963 (Act 62 of 1963)]** 1993 (Act No. 194 of 1993), if such patent, design or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom: Provided that the provisions of this paragraph shall not apply in respect of any expenditure relating to the renewal of the registration of any trade mark which is incurred by such taxpayer on or after ...;”;

- (f) by the addition to paragraph (gC) of the following proviso:
“Provided that the provisions of this paragraph shall not apply in respect of any expenditure relating to the registration of any trade mark, the extension of the term or registration period of, or the renewal of the registration of such trade mark, which is incurred by such taxpayer on or after ...;”;
- (g) by the substitution for item (A) of subparagraph (aa) of paragraph (n) of the following item:
 “(A) 15 per cent of an amount equal to the amount remaining after deducting from, or setting off against, the income derived by the taxpayer during the year of assessment (excluding income derived from any retirement-funding employment (being the income or part thereof referred to in the definition of 'retirement-funding employment' in section 1)) the deductions or assessed losses admissible against such income under this Act (excluding this paragraph, sections 17A, 18, 18A and 19 (3) of this Act and paragraph 12(1)(c) to (i), inclusive, of the First Schedule);”;
- (h) by the substitution for item (ii) of the proviso to paragraph (n) of the following item:
 “(ii) the deductions in terms of subparagraph (aa) shall not exceed an amount equal to the amount remaining after deducting from or setting off against the income derived by the taxpayer during the year of assessment the deductions and assessed losses admissible against such income under this Act (excluding the said subparagraph, sections 17A and 19(3) of this Act and paragraph 12(1)(c) to (i), inclusive, of the First Schedule);”.

Repeal of section 11 oct of Act 58 of 1962, as inserted by section 10 of Act 91 of 1982

23. (1) Section 11 oct of the Income Tax Act, 1962, is hereby repealed.
 (2) Subsection (1) shall come into operation on 1 March 2000.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963,

section 12 of act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 10 of Act 96 of 1985, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993 and section 11 of Act 46 of 1996

- 24.** Section 13 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) in the case of any such building the erection of which has or is commenced on or after 1 January 1989 and any such improvements which have or are commenced on or after that date, other than any building or improvements in respect of which the increased allowance contemplated in paragraph (c) of this proviso applies, the allowance under this subsection shall be increased to 5 per cent of the cost (after the deduction of any amount as provided in subsection (3)) to the taxpayer of such building or improvements; and”;
- (b) by the substitution for the words following subparagraph (ii) of paragraph (c) of the proviso to subsection (1) of the following words: “where such building has or is or such improvements have been or are brought into use by the taxpayer on or before 31 March 2000, the allowance under this subsection shall be increased to 10 per cent of the cost (after the deduction of any amount as provided for in subsection (3)) to the taxpayer of such building or improvements.”.

Amendment of section 18 of Act 58 of 1962, as inserted by section 12 of Act 104 of 1980 and amended by section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992 and section 16 of Act 21 of 1995

- 25.** Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) any contributions made by him during the year of assessment to any medical scheme registered under the provisions of the Medical Schemes Act, **[1967 (Act 72 of 1967)]** 1998 (Act No. 131 of 1998); and”.

Repeal of section 21ter of Act 58 of 1962, as inserted by section 20 of Act 89 of 1969 and amended by section 17 of Act 52 of 1970, section 18 of Act 88 of 1971, section 17 of Act 90 of 1972, section 16 of Act 65 of 1973, section 21 of Act 85 of 1974, section 19 of Act 69 of 1975, section 14 of Act 103 of 1976, section 16 of Act 113 of 1977, section 17 of Act 91 of 1982 and section 1 of Act 49 of 1996

26. (1) Section 21 *ter* of the Income Tax Act, 1962, is hereby repealed.
 (2) Subsection (1) shall come into operation on 1 March 2000.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995 and section 12 of Act 36 of 1996

27. (1) Section 22 of the Income Tax Act, 1962, is hereby amended?
- (a) by the substitution for subparagraph (iii) of paragraph (b) of subsection (8) of the following subparagraph:
 “(iii) trading stock of any company has on or after 21 June 1993 been distributed in specie (whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital (including any share premium), [or] a redemption of redeemable preference shares or acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973)) to any shareholder of that company; or”;
- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) in the case of any trading stock which consists of any instrument, interest rate agreement or option contract in respect of which a company has made an election which has taken effect as contemplated in section 24J(9), the market value of such trading stock as contemplated in such section.”.
- (2)(a) Subsection (1)(a) shall be deemed to have come into operation on 30 June 1999.
 (b) Subsection (1)(b) shall come into operation on the date of promulgation of this Act.

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, section 18 of Act 28 of 1997 and section 35 of Act 30 of 1998

28. Section 24I of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection:
 “(6) Any inclusion in or deduction from income in terms of this section in respect of an exchange difference, transitional exchange difference or a premium or discount in respect of a forward exchange contract or premium or other consideration in respect of or in terms of a foreign currency option contract, shall be in lieu of any deduction or inclusion which may otherwise be allowed or included under any other provision of this Act.”.

Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996 and section 19 of Act 28 of 1997

29. (1) Section 24J of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for paragraph (b) of the definition of “interest” in subsection (1) of the following paragraph:
- “(b) **[gross amount of any] so much of the** amount payable by a borrower to the lender **[in respect of any interest-bearing] in terms of any lending** arrangement **[irrespective of the term of such arrangement, which would have constituted a “lending arrangement” as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968), had the term of such arrangement been less than six months] as represents compensation for any amount** to which the lender would, but for such lending arrangement, have been entitled; and”;
- (b) by the insertion after the definition of “issuer” in subsection (1) of the following definition:
- “‘lending arrangement’ means any arrangement or agreement in terms of which—
- (a) a person (in this section referred to as the lender) lends any instrument to another person (in this section referred to as the borrower); and
- (b) the borrower in return undertakes to return any instrument of the same kind and of the same or equivalent quantity and quality to the lender;”;
- (c) by the substitution for paragraph (a) of subsection (9) of the following paragraph:
- “(a) Any company whose business comprises the dealing in instruments (including the short selling of instruments), **[or] interest rate agreements or option contracts** may elect that the provisions of subsections(2) to (8), inclusive, **[and] section 24K and section 24L** shall not apply to all such instruments, **[or] interest rate agreements or option contracts** in respect of which it so deals in.”;
- (d) by the substitution for subparagraph (ii) of paragraph (b) of subsection (9) of the following subparagraph:
- “(ii) be accompanied by a statement setting forth full details of the methodology to be applied by the company to determine the market value as contemplated in paragraph (c) in relation to all instruments, **[or] interest rate agreements or option contracts** contemplated in paragraph (a);”;
- (e) by the substitution for items (A) and (B) of subparagraph (iii) of paragraph (b) of subsection (9) of the following items:
- “(A) the methodology to be applied by such company to determine the market value as contemplated in paragraph (c) in respect of such instruments, **[or] interest rate agreements or option contracts;** and

- (B) the manner in which such market value in relation to such instruments, **[or]** interest rate agreements or option contracts is to be taken into account in the determination of the taxable income of such company during any year of assessment; and”;
- (f) by the substitution for subparagraph (iv) of paragraph (b) of subsection (9) of the following subparagraph:
 “(iv) subject to the provisions of paragraphs (e) and (f), be binding upon such company in respect of all such instruments, **[and]** interest rate agreements and option contracts during the year of assessment in which it took effect and every succeeding year of assessment.”;
- (g) by the substitution for paragraphs (c) and (d) of subsection (9) of the following paragraphs:
 “(c) The market value in relation to all instruments, **[and]** interest rate agreements and option contracts contemplated in paragraph (a) of a company which made an election as contemplated in such paragraph shall be determined in accordance with commercially accepted practice which is applied by such company consistently in respect of all such instruments, **[and]** interest rate agreements and option contracts for financial reporting purposes to its shareholders.
 (d) Any instrument, **[or]** interest rate agreement or option contract contemplated in paragraph (a) which as a result of an election made in terms of such paragraph is to be dealt with on a market value basis as contemplated in the foregoing provisions of this subsection shall (subject to the provisions of paragraphs (e) and (f)) be so dealt with until the date of redemption or transfer of such instrument, **[or]** interest rate agreement or option contract.”;
- (h) by the substitution for the words preceding the proviso to subparagraph (ii) of paragraph (f) of subsection (9) of the following words:
 “an appropriate adjustment shall be made to the taxable income of such company during such year of assessment in relation to all instruments, **[or]** interest rate agreements or option contracts contemplated in paragraph (a) of the company held and not disposed of or not redeemed by it, as the case may be, as at the end of such year of assessment, having regard to all interest or amounts which would have been deemed to have been incurred by or accrued to such company had the provisions of this subsection not been applicable during all year of assessment before such year of assessment and all amounts which have been included in or deducted from the income of such company during such years of assessment.”.
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act.

Insertion of section 24L in Act 58 of 1962

30. (1) The following section is hereby inserted after section 24K of the Income Tax Act, 1962:

“24L. Incurral and accrual of amounts in respect of option contracts^{3/4} (1)
 For the purposes of this section “option contract” means an agreement the

effect of which is that any person acquires the option (excluding a foreign currency option contract as defined in section 24I(1))—

- (a) to buy from or to sell to another person a certain quantity of corporeal or incorporeal things before or on a future date at a pre-arranged price; or
- (b) that an amount of money will be paid to or received from another person before or on a future date depending on whether the pre-arranged value or price of an asset, index, currency, rate of interest or any other factor is higher or lower before or on that future date than a pre-arranged value or price.

(2) The amount of—

- (a) any premium or like consideration paid or payable by a person in terms of an option contract; or
- (b) any consideration paid or payable by a person in respect of the acquisition of an option contract by such person,

shall for purposes of this Act be deemed to have been incurred by such person on a day to day basis during the term of such option contract: Provided that—

- (i) where such option contract is exercised, terminated or is disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal until the end of the original term of the option contract shall be deemed to have been incurred by such person on the date of exercise, termination or disposal of the option contract;
- (ii) the provisions of this section shall not be applied to an option contract held by a person as trading stock.

(3) The amount of any premium or like consideration received or receivable by a person in terms of an option contract shall for purposes of this Act be deemed to have accrued to such person on a day to day basis during the term of such option contract: Provided that where such option contract is exercised, terminated or is disposed of, the portion of the amount attributable to the period from the date of exercise, termination or disposal until the end of the original term of the option contract shall be deemed to have accrued to such person on the date of exercise, termination or disposal of the option contract.”.

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

Amendment of section 29 of Act 58 of 1962, as inserted by section 25 of Act 113 of 1993 and amended by section 22 of Act 21 of 1995 and section 16 of Act 36 of 1996

31. Section 29 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
“(2) The taxable income derived by any insurer in respect of any year of assessment commencing before 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section.”;
- (b) by the addition to paragraph (d) of subsection (14) of the following proviso:

“Provided that any transfer relating to the redetermination of the prescribed value in terms of subsection (6) in respect of the last year of assessment commencing before 1 January 2000, shall be deemed to have been made on the last day of such year of assessment and shall be included in and deducted from the income of the relevant fund in determining the taxable income of such funds for such year of assessment;”.

Insertion of section 29A in Act 58 of 1962

32. The following section is hereby inserted in the Income Tax Act, 1962, after section 29:

“29A. Taxation of long-term insurers—(1) For the purposes of this section—

'business' means any long-term insurance business as defined in section 1 of the Long-term Insurance Act;

'insurer' means any long-term insurer as defined in section 1 of the Long-term Insurance Act;

'Long-term Insurance Act' means the Long-term Insurance Act, 1998 (Act 52 of 1998);

'market value', in relation to any asset, means the sum which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market;

'owner', in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy: Provided that where a policy has been—

(a) ceded or pledged solely for the purpose of providing security for the performance of any obligation, the owner shall be the person who retains the beneficial interest in such policy; or

(b) reinsured by one insurer with another insurer, the owner of the reinsurance policy shall be deemed to be owned by the owner of the insurance policy that is so insured;

'policy' means a long-term policy as defined in section 1 of the Long-term Insurance Act;

'policyholder fund' means any fund contemplated in subsection (4)(a), (b) or (c);

'value of liabilities', means an amount equal to the value of the liabilities of the insurer in respect of the business conducted by it in the fund concerned calculated on the basis as may be prescribed by the Chief Actuary of the Financial Services Board in consultation with the Commissioner.

(2) The taxable income derived by any insurer in respect of any year of assessment commencing on or after 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section.

(3) Every insurer shall establish four separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section: Provided that where any insurer which carries on long-term insurance business has prior to the commencement of this section established four separate funds in terms of the provisions of section

29(3), such funds shall for purposes of this section continue to be maintained subject to such adjustments as may be required in terms of this section.

(4) The funds referred to in subsection (3) shall be—

- (a) a fund, to be known as the untaxed policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to—
 - (i) business carried on by the insurer with, and any policy of which the owner is, any pension fund, provident fund, retirement annuity fund or benefit fund;
 - (ii) any policy of which the owner is a person or body the entire receipts and accruals of whom or of which are exempt from tax under any provision of section 10: Provided that an insurer shall not deal with a policy in terms of the provisions of this subparagraph unless it has satisfied itself beyond all reasonable doubt that the owner of such policy is a person or body contemplated herein;
 - (iii) any annuity contracts entered into by it in respect of which annuities are being paid;
- (b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraph (a)) of which the owner is any person other than a company;
- (c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraph (a)) of which the owner is a company; and
- (d) a fund, to be known as the corporate fund, in which shall be placed all the assets (if any) held by the insurer, and all liabilities owed by it, other than those contemplated in paragraphs (a), (b) and (c).

(5) For the purposes of subsection (4), where the owner of a policy is the trustee of any trust or where two or more owners jointly own a policy—

- (a) if all the beneficiaries in such trust or all such owners are funds, persons or bodies contemplated in subsection (4)(a), the owner of such policy shall be deemed to be such a fund, person or body, as the case may be; or
- (b) where paragraph (a) is not applicable and all the beneficiaries in such trust or all such owners are persons other than a company, the owner of such policy shall be deemed to be a person other than a company; or
- (c) where paragraphs (a) and (b) are not applicable, the owner of such policy shall be deemed to be a company.

(6) An insurer who becomes aware that, in consequence of—

- (a) a change of ownership of any policy issued by it; or
- (b) any change affecting the status of the owner of any policy which has the effect that,

the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a policyholder fund other than the policyholder fund in which such assets are actually held, must forthwith transfer from such lastmentioned fund to such firstmentioned fund assets having a market value

equal to the value of liabilities determined on the date of such transfer in relation to the said policy.

(7) Every insurer shall within a period of four months after the end of every year of assessment redetermine the value of liabilities in relation to each of its policyholder funds as at the last day of such year, and—

- (a) where the market value of the assets actually held by it in any such fund exceeds the value of liabilities in relation to such fund on such last day, it shall within the said period transfer from such fund to its corporate fund assets having a market value equal to such excess; or
- (b) where the market value of the assets actually held by it in any such fund is less than the value of liabilities in relation to such fund on such last day, it shall within the said period transfer from its corporate fund to such fund assets having a market value equal to the shortfall.

(8) Any transfer of an asset effected by an insurer between one fund and another fund otherwise than in terms of the provisions of subsection (6) or (7), shall be effected by way of a sale of such asset at the market value thereof and shall for the purposes of this Act be treated as a purchase or sale of such asset, as the case may be, in each such fund.

(9) Subject to the provisions of subsection (11)(d)(i), there shall be exempt from tax any income received by or accrued to an insurer from assets held by it in, and business conducted by it in relation to, its untaxed policyholder fund.

(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer.

(11) In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund in respect of any year of assessment—

- (a) the amount of any expenses and allowances to be allowed as a deduction in the policyholder funds in terms of this Act shall be limited to the total of—
 - (i) the amount of expenses and allowances directly attributable to the income of such fund; and
 - (ii) an amount determined in accordance with the formula

$$Y = \frac{(I + R)}{(I + 3R + 6D)} \times E,$$

in which formula—

- (aa) 'Y' represents the amount to be determined;
- (bb) 'I' represents the gross amount of any interest as defined in section 24J of this Act, received by or accrued to such fund;
- (cc) 'R' represents the rental income of such fund net of expenses directly attributable to such income;
- (dd) 'D' represents the dividend income of such fund; and

- (ee) 'E' represents all—
- (A) expenses allocated to such fund which are directly incurred during such year of assessment in respect of the selling and administration of policies; and
 - (B) expenses and allowances allocated to such fund, which are not included in subparagraph (i), but excluding any expenses directly attributable to any amounts received or accrued which do not constitute income as defined in section 1;
- (b) any amount received or accrued from a source outside the Republic in respect of business conducted by the insurer in the Republic, shall be deemed to have been received or accrued from a source within the Republic;
- (c) there shall be exempt from tax income derived by the insurer from assets held by it in the Republic in respect of business conducted by it in Namibia;
- (d) any amount required to be transferred—
- (i) to the corporate fund in terms of the provisions of subsection (7)(a) shall be included in the income of the corporate fund; and
 - (ii) from the corporate fund in terms of the provisions of subsection (7)(b) shall not be deducted from the income of the corporate fund,
- for purposes of determining the taxable income of such fund for the year of assessment in respect of which the value of liabilities in relation to its policyholder funds was redetermined in terms of that subsection: Provided that where any amount is transferred from the corporate fund to any policyholder fund as contemplated in subparagraph (ii) any subsequent transfer from the policyholder fund to the corporate fund of any amounts which in the aggregate do not exceed the total amount of such transfer, shall not be included in the income of the corporate fund in terms of subparagraph (i) of this paragraph;
- (e) any amount transferred to or from the corporate fund in terms of the provisions of subsection (7), shall not be deducted from or included in the income of the policyholder fund from or to which such amount was transferred, as the case may be;
- (f) the amount of any transfer contemplated in subsection (6) or (8) shall not be deducted from the income of the fund from which it is transferred and shall not be included in the income of the fund to which it is transferred;
- (g) premiums and reinsurance claims received and claims and reinsurance premiums paid shall be disregarded.
- (12) In the allocation of any asset, expenditure or liability to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter—
- (a) to the extent to which such asset, expenditure or liability relates exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability to that fund; and
 - (b) to the extent to which such asset, liability or expenditure does not relate exclusively to business conducted by it in any one fund, allocate such asset, expenditure or liability in a manner which is consistent with and appropriate to the manner in which its business is conducted.

(13) An insurer who as at the commencement of its first year of assessment commencing on or after 1 January 2000 has not established the separate funds contemplated in subsection (4) shall as at the commencement of that year determine the value of liabilities required in respect of each of its policyholder funds, and shall be deemed for the purposes of applying this section in that year and in any succeeding year of assessment in which it has not yet established such funds, to have established and maintained such funds in accordance with the provisions of this section.

(14) For the purposes of subsection (13)—

- (a) an appropriate portion of all the assets and liabilities of an insurer shall be deemed to have been placed by it in each of its funds in accordance with the provisions of this section;
- (b) an appropriate portion of any income received by or accrued to an insurer and any expenditure incurred by it shall be deemed to have been received by or to have accrued to, or to have been incurred by, as the case may be, each of its funds in accordance with the provisions of this section; and
- (c) any amount which would have been required to be transferred in terms of the provisions of subsection (7)(a) or (b) had such separate funds been so established and maintained, shall be deemed to have been so transferred.

(15) Every insurer shall, within 6 months after the commencement of the first year of assessment commencing on or after 1 January 2000, redetermine the value of liabilities in relation to each of its policyholder funds as at the first day of such year—

- (a) on the basis as prescribed in the definition of “prescribed value” in section 29(1); and
- (b) on the basis as prescribed in the definition of “value of liabilities” in subsection (1) of this section.

(16) Where the value of liabilities in the policyholder fund as determined in accordance with—

- (a) subsection (15)(a) exceeds the liabilities as determined in accordance with paragraph (b) thereof, the insurer shall, within the period contemplated in subsection (15), transfer assets having a value equal to such difference from the policyholder fund to the corporate fund, and such transfer shall be dealt with as if it was made in terms of subsection (7)(a): Provided that so much of the amount required to be transferred to the corporate fund in terms of the provisions of this subsection, as does not exceed the amounts contemplated in subsections (10)(b) and (11)(c) of section 29 that were required to have been dealt with in terms of section 29(14)(e), had the provisions of that section been applicable, shall not be included in the income of the corporate fund in terms of subsection (11)(d)(i) during the first year of assessment commencing on or after 1 January 2000; or
- (b) subsection (15)(b) exceeds the liabilities as determined in accordance with paragraph (a) thereof, the insurer shall, within the period contemplated in subsection (15), transfer assets having a value equal to such difference from the corporate fund to the policyholder fund and such transfer shall be dealt with as if it was made in terms of subsection (7)(b).”.

Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995 and amended by section 37 of Act 30 of 1998

- 33.** (1) Section 31 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the word “and” at the end of paragraph (b) of subsection (1) of the word “or”; and
 - (b) by the addition to the definition of “international agreement” of the following paragraph:
 - “(c)(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
 - (ii) any other 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
 for the supply of goods or services to or by a permanent establishment as contemplated in section 9C(1) of either of such persons outside the Republic; and”.
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act, and shall apply in respect of any transaction, operation or scheme entered into on or after that date.

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

- 34.** Section 38 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (2) of the Afrikaans text of the following words:

“’n maatskappy waarvan alle kategorieë van ekwiteitsaandele op die bepaalde datum openbaar deur ’n **[effektebeurs]** aandelebeurs in die onder sy magtiging uitgereikte lys genoteer word, mits die Kommissaris oortuig is—“;
 - (b) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of subsection (2) of the Afrikaans text of the following subparagraphs:
 - “(i) dat die **[effektebeurs]** aandelebeurs ’n erkende en *bona fide* **[effektebeurs]** aandelebeurs onder behoorlike beheer is;
 - (ii) dat die reëls en regulasies van die **[effektebeurs]** aandelebeurs met betrekking tot die toestaan en voortdoring van ’n notering vir die koop en verkoop van aandele volle beskerming verleen aan die belange van die publiek met betrekking tot transaksies in die aandele van die maatskappy;”;
 - (c) by the substitution for paragraph (e) of subsection (2) of the following paragraph:

- “(e) any insurance society or company subject to assessment in terms of section **[twenty-eight]** 28, 29 or 29A.”.

Amendment of section 62 of Act 58 of 1962, as amended by section 8 of Act 114 of 1977, section 36 of Act 101 of 1990 and section 23 of Act 28 of 1997

- 35.** Section 62 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution of subsection (1A) of the Afrikaans text of the following subsection:
 “(1A) Waar ’n maatskappy wat nie op enige **[effektebeurs]** aandelebeurs genoteer word nie onroerende goed besit waarop *bona fide*-boerdery in die Republiek voortgesit word, word die waarde van bedoelde onroerende goed, vir sover dit toepaslik is vir die doeleindes van die bepaling van die waarde van enige aandele in bedoelde maatskappy, volgens voorskrif van die omskrywing van „billike markwaarde” in artikel 55 (1) bepaal.”; and
- (b) by the substitution for paragraph (a) of the proviso to subsection (2) of the following paragraph:
 “where **[it is established to the satisfaction of]** the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall for the purposes of paragraphs (a) and (c) of subsection (1) be deemed to be the annual value of the enjoyment of such property;”.

Substitution of section 63 of Act 58 of 1962

- 36.** Section 63 of the Income Tax Act, 1962, is hereby substituted by the following section:
 “The decision of the Commissioner in the exercise of his discretion under **[subsection (3) of section fifty-seven, sub-paragraph (iii) of paragraph (c) of subsection (1) of section sixty-two or the proviso to paragraph (d) of the said subsection (1), or subsection (4) of section sixty-two]** section 57(3), section 62(1)(c)(iii), the proviso to section 62(1)(d) or section 62(2)(a) or 62(4) and any determination by the Commissioner under **[paragraph (g) of subsection (2) of section fifty-five]** section 55(2)(g) of the value of the mineral rights attaching to any property, shall be subject to objection and appeal.”.

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996 and section 25 of Act 28 of 1997

- 37.** Section 64B of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution of paragraph (a) of subsection (10) of the Afrikaans text of the following paragraph:
“(a) in die geval van ’n maatskappy wat op ’n erkende **[effektebeurs]** aandelebeurs genoteer is of ’n filiaal (soos omskryf in artikel 1 van die Maatskappywet, 1973 (Wet No. 61 van 1973)), van so ’n maatskappy, hy nie voor daardie datum die dividend aan die betrokke aandeelhouders betaal het of die verklaring daarvan in die openbaar aangekondig het nie; of”;
- (b) by the substitution for paragraph (a) of subsection (13) of the following paragraph:
“(a) where the company has established or deemed to have established separate funds as contemplated in section 29 or 29A, to dividends accrued on shares constituting an asset in its corporate fund; or”; and
- (c) by the substitution for subsection (14) of the following subsection:
“(14) For the purposes of subsection (13) the free reserves of an insurer shall?
(a) subject to the provisions of paragraph (b), be the amount by which the market value of the total assets held by the insurer exceeds the prescribed value determinable in terms of section 29 in relation to business and policies contemplated in subsection (4)(a), (b) and (c) of that section; or
(b) in respect of any dividend cycle commencing on or after the commencement of the first year of assessment of the company in respect of which section 29A applies, be the amount by which the market value of the total assets held by the insurer exceeds the value of liabilities determinable in terms of section 29A in relation to business and policies contemplated in subsection (4)(a), (b) and (c) of that section.”.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996 and section 40 of Act 30 of 1998

- 38.** (1) Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso to paragraph (c) of subsection (4) of the following words:
“to so much of any such amount distributed (other than an amount contemplated in subsection (3)(e)) as exceeds the company's profits and reserves which are available for distribution, including any amount deemed in terms of the definition of “dividend “ in section 1 to be a profit available for distribution.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount deemed to have been distributed on or after that date.

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

39. Section 70 of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (3) and (3A) of the following subsections:

“(3) Every company which has after 31 December 1973 transferred from its reserves (excluding any share premium account) or unappropriated profits to its share capital or share premium account any amount which is in whole or part deemed by the **[second]** ~~first~~ proviso to the definition of 'dividend' in section 1 to be a profit available for distribution to shareholders of the company, shall, when rendering the annual return of the company's income, furnish the Commissioner with a statement (which may be included in the, accounts or statements accompanying such return) showing the profits of a capital nature and those not of a capital nature so deemed to be available for distribution on the last day of the year of assessment in question.

(3A) Where any cash or any asset (including any asset, interest, benefit or advantage referred to in the **[third]** ~~second~~ proviso to the definition of 'dividend' in section 1) is given to any shareholder of a company in consequence of the winding-up, liquidation or reconstruction of the company, **[or]** the partial reduction or redemption of its share capital (including any share premium) or acquisition of any share of such shareholder in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973), and the amount of such cash or the value of such asset or a portion of such amount or value constitutes a dividend in terms of the said definition the company shall, before payment to the shareholders is effected or within such period as the Commissioner may approve, calculate the amount of such dividend and furnish the Commissioner with a written statement setting forth the facts necessary for a determination by the Commissioner of the amount of such dividend and giving details of the company's calculation of that amount.”.

Amendment of section 74D of Act 58 of 1962, as inserted by section 14 of Act 46 of 1996 and amended by section 29 of Act 28 of 1997

40. Section 74D of the Income Tax Act, 1962, 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 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993 , section 27 of Act 21 of 1994 and section 15 of Act 46 of 1996

41. Section 75 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him fails to retain—

(i) all records, namely ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices, stock lists and all other books of account; and

(ii) any data created by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for purposes of backing up such data,

relating to any trade carried on by him and recording the details from which his returns for the assessment of taxes under this Act were prepared, for a period of four years from the date upon which the return relevant to the last entry in any such record was received by the Commissioner; or”.

Amendment of section 75A of Act 58 of 1962, as inserted by section 42 of Act 30 of 1998

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

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

“(1) Notwithstanding the provisions of section 4, the Commissioner may from time to time publish [by notice in the *Gazette* a list of persons who have] for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of [any] such offence in terms of—”; and

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

“(2) Every such [list] publication may specify—”.

Amendment of Paragraph 11 of First Schedule to Act 58 of 1962, as substituted by section 44 of Act 113 of 1993 and amended by section 32 of Act 36 of 1996

43. (1) Paragraph 11 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (iii) of subparagraph (c) of the following item:

“(iii) where the farmer is a company, has on or after 21 June 1993 been distributed in specie (whether such distribution occurred by means of a dividend, including a liquidation dividend, a total or partial reduction of capital (including any share premium), [or] a redemption of redeemable preference shares or acquisition of shares in terms of

section 85 of the Companies Act, 1973 (Act No. 61 of 1973)) to a shareholder of such company; or”.

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

Insertion of paragraph 2B in Second Schedule to Act 58 of 1962

44. (1) The following paragraph is hereby inserted after paragraph 2A of the Second Schedule to the Income Tax Act, 1962:

“2B. For the purposes of paragraph 2, where any endorsement has been made in the records of the fund of which such person is or was a member, which provides that any part of the pension interest shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), the amount of such part shall be deemed to be an amount that accrues to such person on the date on which the benefit, of which such amount forms part, accrues to such person: Provided that so much of any tax payable as is due to the inclusion in the income of such person of any amount in accordance with the provision of this paragraph, may be recovered by such person from the former spouse to whom or in whose favour the benefit in question accrues.”.

(2) Subsection (1) shall come into operation on the date of promulgation of the Act and shall apply in respect of any lump sum benefit accrued on or after that date.

Insertion of paragraph 12A in Fourth Schedule to act 58 of 1962

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

“ESTIMATED ASSESSMENTS

12A.(1) Where any employer which is required to deduct or withhold employees' tax in terms of the provisions of paragraph 2, has failed to so deduct or withhold such tax, or has failed to pay over any amount of employees' tax deducted or withheld, and such employer has not been absolved from its liabilities in terms of the provisions of this Schedule, the Commissioner may make a reasonable estimate of the amount of employees' tax which is required to be deducted or withheld and issue to the employer a notice of assessment of the unpaid amount.

(2) An employer shall be liable to the Commissioner for the payment of the amount of employees' tax so estimated as if such amount was deducted or withheld as contemplated in paragraph 2.

(3) Any estimate of the amount of employees' tax payable by an employer in terms of the provisions of subparagraph (1), shall be subject to objection and appeal.”.

Amendment of paragraph 30 of Fourth Schedule to Act 58 of 1962, as amended by section 45 of Act 21 of 1995

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

“shall be guilty of an offence and liable on conviction to a fine **[not exceeding four hundred rand]** or to imprisonment for a period not exceeding **[six] 12** months or to both such fine and such imprisonment.”.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice No. 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice No. R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice No. R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995 and section 50 of Act 28 of 1997

47. Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the Afrikaans text for paragraph (a) of the proviso to subparagraph (1) of the following paragraph:

“(a) waar die reg aan 'n werknemer verleen is om bedoelde motorvoertuig te gebruik soos in subparagraaf (2) beoog en bedoelde voertuig, of die reg van gebruik daarvan, nie minder nie as 12 maande voor die datum waarop bedoelde reg aan die werknemer verleen is, deur die werkgewer verkry is, daar van die bedrag wat ingevolge die voorafgaande bepalinge van hierdie subparagraaf bepaal is, 'n waardeverminderingstoelae afgetrek word bereken volgens die verminderdesaldometode teen die koers van 15 persent vir elke volle tydperk van 12 maande vanaf die datum waarop die werkgewer vir die eerste maal bedoelde voertuig of die reg van gebruik daarvan verkry het tot die datum waarop die reg van gebruik daarvan vir die eerste maal aan genoemde werknemer verleen is; en”.

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

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

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

“'this Act' includes any proclamation, Government Notice, regulation or rule issued or made or agreement concluded or deemed to have been concluded thereunder or any taxation proposal contemplated in section 58 which is tabled in the **[House of] National Assembly**;” and

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 "In this section, except in the definition of 'package', and in sections 6, 7, 18, 38, **[and] 64A and 87(2)**, 'container' means transport equipment—".

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, section 34 of Act 34 of 1997 and section 58 of Act 30 of 1998

49. Section 4 of the Customs and Excise Act, 1964, is hereby amended by the addition after subsection (12) of the following subsection:

"(12A)(a) Where, on the exportation of any goods from the Republic, any certificate, declaration or other evidence has been furnished regarding the origin of such goods to comply with the provisions of any agreement contemplated in section 46, 49 or 51 or any other requirement or any practice, an officer may, for the purposes of verifying or investigating such certificate, declaration or other evidence, require—

- (i) the exporter; or
- (ii) any other person appearing to the officer to have been concerned in any way with—
 - (aa) the production or manufacture or exportation of such goods;
 - (bb) any goods from which directly or indirectly such goods have been produced or manufactured; or
 - (cc) the furnishing of such certificate or other evidence,

to furnish such information in such a manner and within such time as the officer may determine, and to produce on demand for inspection and to allow the making of copies or extracts from such invoices, bills of lading, bills of entry, books of account or other documents in whatever form, as the officer may specify.

(b) No person may, without good cause shown, refuse to comply with any such requirement of an officer."

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

50. Section 18 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following subsection:

"(1A) For the purposes of subsection (1)(a) imported goods landed in the Republic includes goods in transit through the Republic which are destined for removal to a consignee in any country outside the Republic."

Amendment of section 36 of Act 91 of 1964, as amended by section, as amended by section 4 of Act 103 of 1972, and section 4 of Act 103 of 1972, and section 6 of Act 98 of 1980, and substituted by section 25 of Act 45 of 1995, and amended by section 2 of Act 44 of 1996

51. Section 36 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the deletion of subsection (1);
 (b) by the substitution for subsections (2), (3) and (4) of the following subsections:

“(2)(a) Every manufacturer shall, in respect of **[such]** beer made from malt manufactured by the manufacturer in the Republic, register with the Commissioner the brand names whereunder such beer will be sold or disposed of for home consumption, together with the alcoholic strength by volume and the quantity which will be indicated on each container size of **[and the tariff item of Part 2 of Schedule No. 1 which will apply in respect of]** the beer so sold or disposed of under any such name, and no beer shall be so sold or disposed of unless so registered.

(b)(i) The provisions of paragraph (a) shall *mutatis mutandis* apply if the registered alcoholic strength by volume or quantity of such beer is changed.

(ii) Any such change shall be effected within the time as may be prescribed by rule.

(c) Where beer is subject to further fermentation after it is packaged, the alcoholic strength by volume to be registered and shown on the container shall be the strength which the beer is reasonably expected to have when consumed.

(d) No beer of any brew shall be packaged for home consumption if the alcoholic strength by volume thereof exceeds such registered strength after deduction of any tolerance prescribed by rule.

(e) If beer in bulk is removed in bond from a customs and excise manufacturing warehouse the alcoholic strength by volume shall be tested before removal and recorded on all documents of removal and reflected in the records required to be kept in terms of the rules.

(3) No such beer shall be sold or disposed of by any manufacturer for home consumption except in a container which indicates, the name, **[and]** the registered alcoholic strength by volume and quantity of such beer, and any invoice or other document relating to such sale or disposal of such beer shall indicate the registered name thereof.

(4) Any description on any container of beer bearing an indication of a brand name, **[and]** registered alcoholic strength by volume and quantity registered with the Commissioner shall be deemed to be a declaration for the purpose of assessment of duty.”;

- (c) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(6)(a) If the actual alcoholic strength by volume of any beer in any container not intended for export as contemplated in subsection (9), bearing an indication of a name and alcoholic strength by volume registered with the Commissioner under this section is ascertained after deduction of any tolerance prescribed by rule, to be higher than the

alcoholic strength by volume [**specified in the tariff item**] registered in relation to beer of such name the manufacturer shall be liable for the duty on the full quantity of the brew or blend of brews of beer from which such container was filled [**at the rate of duty applicable to beer of**] according to the actual strength as ascertained in respect of the contents of such container.

(d) by the addition of the following subsections:

“(7)(a) Every manufacturer shall—

(i) test the alcoholic strength by volume of each brew using a method approved by the Commissioner and record the results of each test as may be prescribed by rule;

(ii) keep a record of the actual quantity of beer in each container size packaged for sale or disposal for home consumption.

(b)(i) Where the average of the test results for any registered brand name over any two successive periods of three months show that the average alcoholic strength by volume although within any tolerance prescribed by rule, exceeds such registered strength, after deduction of any average allowance as may be prescribed by rule, duty shall, if the Commissioner so determines, be payable in respect of such excess strength on all the beer accounted for during such periods.

(ii) Payment of such additional duty shall be shown separately on, and included with, the first account presented to the Controller after the end of such period.

(iii) Where the average alcoholic strength so exceeds the registered strength the manufacturer shall change the registration within the time prescribed by rule.

(c)(i) Where the actual total quantity of beer of each container size sold of or disposed of for home consumption during any period of three months exceeds the calculated total quantity, according to the registration for such container size, after deduction of any average allowance as may be prescribed by rule, duty shall be payable on the excess quantity.

(ii) Such excess shall be shown separately on, and payment included with, the first account presented to the Controller after the end of such period.

(d) A manufacturer shall not be entitled to any refund of duty if the alcoholic strength referred to in paragraph (b) or the quantity referred to in paragraph (c) is less than the registered strength or quantity, as the case may be.

(8)(a) An officer may take samples of any beer at any time and send such samples to a designated person for analysis.

(b) The Commissioner may designate any person to analyse such sample.

(9) Any beer intended for export shall only be exported in containers with a distinguishing mark approved by the Commissioner.

(10) The Commissioner may prescribe by rule—

(a) the manner of determining alcoholic strength by volume and quantity for registration;

(b) the tolerance allowable on registered alcoholic strength by volume;

- (c) the average allowances for the purposes of subsection (7)(b)(i) and (7)(c)(i);
- (d) records to be kept and reports to be furnished of ingredients used, production, test results of the alcoholic strength by volume of brews, quantities manufactured and put in containers, losses and beer returned;
- (e) the procedure or method for the taking of samples by an officer, the method of analysis of such sample, the form for reporting on the analysis of such sample by such designated person, the results of such analysis and any other particulars as may be required on such form;
- (f) the time and the circumstances within which any change of the registration of alcoholic strength by volume or quantity is required to be effected;
- (g) any other measure for controlling the manufacturing processes or the removal of beer for home consumption or export."

Substitution of section 37A in Act 91 of 1964

52. (1) Section 37A of the Customs and Excise Act, 1964, is hereby substituted by the following section:

"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, where—

- (i) any goods are classified under any heading or subheading of Chapter 27 of Part 1 of Schedule No. 1;
- (ii) such goods are also specified in any item of Part 2 and Part 5 of Schedule No. 1;
- (iii) such heading or subheading has been expressly quoted in any such item ; and
- (iv) a free rate of duty is prescribed in respect of each such heading or subheading and such item,

such goods shall, as may be prescribed by rule, on importation into or manufacture in the Republic or on being marked, be accounted for in any customs and excise warehouse licensed in terms of this Act.

(b) For the purposes of this section the Commissioner may, on such conditions as he may impose in each case in order to ensure the proper control over the storage, marking and removal of the goods contemplated in paragraph (a), approve any such warehouse and any licensee or class of licensee of such warehouse,

(c) Unless so approved by the Commissioner, no person shall deal with any such goods in any manner whatsoever.

(2)(a) If any goods are described in any heading or subheading or item referred to in subsection (1)(a) as marked, the unmarked goods concerned shall be marked by the approved licensee in the approved warehouse by the addition of such marker; in such proportion which is equal to or exceeds, and in accordance with such procedure and control measures, as may in each case be prescribed by rule.

(b) Any goods contemplated in subsection (1) shall each be stored separately from all other goods and shall be subject *mutatis mutandis* to the provisions of this Act relating to dutiable goods stored in and removed from a customs and excise warehouse, as may be prescribed by rule.

(c)(i) Subject to the provisions of subparagraph (iii), any reference to 'marked goods' or 'marker' in this section or any heading or subheading of Chapter 27 of Part 1 or in any item of Part 2 or Part 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule, shall be deemed to be a reference to unmarked goods referred to in paragraph (c)(ii) which have been marked and the marker which is required to be added 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 Part 5 of Schedule No. 1 or in any note to such Chapter or Part or in any rule shall be deemed to be 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 purpose of establishing any contravention of any provision of this section, any goods shall be deemed to contain marked goods when such goods contain a proportion of the marker equal to or exceeding that as may be prescribed by rule.

(d) The addition of a marker shall not constitute mixing or blending for the purposes of—

(i) section 37; or

(ii) the classification of any goods in any heading, subheading or item of Schedule No.1, except as provided in this section.

(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 an invoice to the purchaser, or to any other person to whom the goods are so disposed of containing such particulars as may be prescribed by rule.

(b) The provisions of paragraph (a) shall not apply to stock loan transactions between approved licensees of customs and excise warehouses.

(c) 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.

(d) Any person referred to in paragraph (a) and any other person who 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 reflecting such particulars and for such period and shall comply with any such other requirements, as may be prescribed by rule.

(4)(a) No person shall—

(i) mix any marked goods in any proportion with distillate fuel or petrol;

- (ii) mix any marked goods in any proportion with any lubricity agent for use as fuel in any engine;
- (iii) mix any marked goods in any proportion with any lubricity agent, or be in possession of any marked goods mixed in any proportion with any lubricity agent, or be in possession of marked goods for mixing with any lubricity agent in any circumstances or for any purpose, otherwise than in accordance with this section and the rules;
- (iv) use any marked goods, whether or not mixed with any other goods in any proportion, as fuel in any engine;
- (v) sell or dispose of in any manner whether or not for any consideration or acquire any marked goods or any marked goods mixed with any lubricity agent for use as fuel in any engine;
- (vi) be in possession of any marked goods mixed in any proportion with distillate fuel or petrol;
- (vii) be in possession of any marked goods or marked goods mixed in any proportion with any lubricity agent for use as fuel in any engine;
- (viii) remove or neutralise or attempt to remove or neutralise any marker in any marked goods;
- (ix) add any substance to any marked goods which can prevent or impede the detection of the marker;
- (x) be in possession of any marked goods or sell or dispose of in any manner whether or not for any consideration or acquire any marked goods in which is present any substance which or the colour of which can prevent or impede the detection of the marker;
- (xi) mix any unmarked goods with any marked goods; or
- (xii) unless approved by, and subject to such conditions as may be imposed by, the Commissioner, import any goods containing the marker.

(b) Any person who so mixes or uses or sells or disposes or acquires or possesses any marked goods or so adds any substance to any marked goods or so removes or neutralises or attempts to remove or to neutralise any marker or any person to whom any invoice referred to in subsection (3)(a) has been issued in respect of the marked goods concerned, shall, in addition to any other liability incurred in terms of this Act, be liable, as the Commissioner may determine, for the payment of an amount not exceeding 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 greatest 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 any amount 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) For the purposes of calculating the duty payable on any marked goods mixed with distillate fuel, petrol, unmarked goods or lubricity agent in any tank including the fuel tank of any engine, such duty shall be calculated, on the total quantity of such mixed goods, in accordance with the provisions of 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) keep any invoice issued or copy thereof;
- (ii) issue any invoice;
- (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, in respect of the goods to which such failure relates, be liable, as the Commissioner may determine, for the payment of an amount not exceeding 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 greatest amount of duty, unless it is proved within 30 days of the date of any demand for payment of such amount 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 marked goods referred to in paragraph (b)(i) shall not absolve the person concerned from compliance with the provisions of paragraph (a).

(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 person for analysis;
- (iii) stop and detain any vehicle or mobile apparatus in terms of section 88(1)(a) with or without the assistance of any traffic officer or member of the South African Police Service or the South African National Defence Force;
- (iv) detain any ship in terms of section 88(1)(a) with or without the assistance of any 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.

(c) The Commissioner may—

- (i) by rule prescribe the form for reporting on any vehicle or mobile apparatus stopped or premises visited, or any person concerned with such vehicle, mobile apparatus or premises, or on any procedure or method for the taking or analysis of any sample by an officer, or on the results of such analysis and any other particulars as may be required on such form;

- (ii) designate any person to analyse any such sample;
- (iii) by rule prescribe the form for reporting on the analysis of such sample by such designated person, the results of such analysis and any other particulars as may be required on such form;
- (iv) by rule prescribe the method for sealing any tank or container.

(d) Any person who is in any way concerned with any marked goods or any vehicle or mobile apparatus or any premises where any tank or other container is situated shall furnish an officer on demand with any particulars which he or she is able to provide for the purposes of the report referred to in paragraph (c).

(6)(a) If any report by the person designated by the Commissioner or by any person in the employ of and authorised by such designated person, on the prescribed form, contains particulars indicating that the goods concerned have been dealt with contrary to the provisions of this section—

- (i) such goods and any tank or other container thereof;
- (ii) any ship or vehicle used in the removal or carriage of such goods or any ship or vehicle in which such goods are used as fuel as contemplated in section 87(2);
- (iii) any marked goods or any mixture of marked goods with other goods conveyed in any manner by such vehicle;
- (iv) any engine in which such goods are used as fuel and any apparatus operated by such engine,

shall be liable to forfeiture.

(b) Any person who is in any way concerned with such goods as contemplated in subsection 4(b) shall be liable in respect thereof for payment of an amount calculated on the same basis as provided in that subsection.

(c) Any goods otherwise found to have been dealt with contrary to the provisions of this section and any goods which have been used in so dealing with those goods shall likewise be liable to forfeiture.

(d) The owner or whoever has possession or control of any goods, vehicle, mobile apparatus, engine, tank or other container, shall be liable for any costs or expenses, including the cost of analysis of any sample by the designated person, incurred by, and charges due to, the Commissioner in the handling of or the dealing with any such goods, vehicle, mobile apparatus, engine, tank or other container for the purposes of this section.

(7)(a) Notwithstanding the provisions of subsection (4) and anything to the contrary in any other provision of this Act whenever any marked goods have become mixed with or contaminated by unmarked goods or any other goods, by an act or omission which by the exercise of reasonable care could not have been avoided, such mixing or contamination shall, in the event that the proportion of the marker present in such mixed or contaminated goods is less than the proportion prescribed by rule in terms of subsection 2(a), but is equal to or exceeds the proportion prescribed by rule in terms of subsection (2)(c)(iii), be reported immediately to the Commissioner, unless such mixing or contamination occurs within a licensed customs and excise warehouse, and the licensee complies with the provisions of subparagraphs (i) and (ii) of paragraph (b), and a report of each such event is prepared and kept available for inspection by an officer.

(b) Such goods shall, subject to the approval of and to such conditions as the Commissioner may in each case impose—

- (i) be blended or mixed with other goods by the licensee of a customs and excise warehouse until the proportion of the marker is less than the proportion prescribed by rule in terms of subsection (2)(c)(iii) in which case the total quantity of such mixed or blended goods shall be liable to the duty applicable to such goods in terms of Schedule No. 1 on removal from such warehouse; or
- (ii) be delivered to any person who is registered as required by the rules, for mixing or blending with other goods where such mixed or blended goods are not capable of use as a fuel in any engine.

(c) If the Commissioner for any reason finds that such mixed or contaminated marked goods cannot be dealt with as contemplated by paragraph (b), within any reasonable period determined by the Commissioner, such goods shall on expiry of such period be regarded as having been abandoned to the Commissioner and may thereafter be disposed of in whatever manner the Commissioner considers reasonable in the circumstances.

(d) The licensee of the customs and excise warehouse, the purchaser or any other person to whom the marked goods were disposed of or whoever had control thereof when such mixing or contamination occurred shall be liable for any costs or expenses incurred by and charges due to the Commissioner in respect of any handling of or dealing with such goods in accordance with the provisions of paragraphs (b) or (c).

(e) Any person who deals with such mixed or contaminated goods contrary to the provisions of paragraph (b), shall, in addition to any other liability incurred in terms of this Act, be liable in respect of the total quantity of such goods for payment of an amount calculated on the same basis as provided in subsection (4)(b) and the goods shall be liable to forfeiture.

(8)(a) Where any goods may be disposed of in terms of section 90, the Commissioner may, notwithstanding the provisions of that section, but subject to such conditions as the Commissioner may in each case impose, which may include conditions requiring payment of any amount determined by the Commissioner—

- (i) dispose of such goods for mixing or blending with other goods as contemplated in subsection (7)(b);
- (ii) dispose of such goods in any other manner which the Commissioner considers reasonable in the circumstances; or
- (iii) order the destruction of such goods.

(b) The person from whom the goods were seized shall be liable for any costs and expenses incurred by and charges due to the Commissioner in respect of the handling of or dealing with such goods as contemplated in paragraph (a).

(9)(a) No person shall acquire or sell or dispose of in any manner whether or not for any consideration or be in possession of or have under his control or use—

- (i) any goods, other than marked goods, for which provision is made free of duty in Schedule No. 1 as contemplated in subsection (1)(a); or
- (ii) any marked goods mixed with any lubricity agent, except in accordance with the provisions of this section and the rules.

(b) In addition to the provisions of this subsection and any rule made thereunder, except as otherwise specified in any rule, any marked goods

mixed or intended to be mixed with any lubricity agent shall be subject to the provisions of this section and the rules relating to marked goods.

(c) Where any person is required by any rule made under paragraph (d) to register with the Commissioner, the Commissioner may—

- (i) require before registration that such person furnishes security in such form, nature or amount as the Commissioner may determine;
- (ii) at any time require that such security be altered or renewed in such manner as the Commissioner may determine;
- (iii) determine the particulars to be furnished on application for registration and the requirements to be complied with before such application is considered;
- (iv) register such person subject to such conditions as the Commissioner may in each case impose;
- (v) refuse to register any person or class of persons and cancel the registration of any person who has dealt with any such goods contrary to the provisions of this section or the rules or any other provision of this Act and refuse re-registration of such person.

(d) The Commissioner may by rule for the purposes of this section prescribe—

- (i) the persons who are required to register and the goods and activities for which they are required to register;
- (ii) the quantities which shall be subject to any such rule;
- (iii) the conditions on which and purposes for which any marked goods may be mixed with any lubricity agent;
- (iv) the conditions on which and the purpose for which any person may sell or dispose of in any manner whether or not for any consideration, or be in possession of or use any such goods;
- (v) any invoice to be issued, the particulars on such invoice, the person who shall keep such invoice or copy thereof, the persons who are required to complete and keep books, accounts and other documents, the form in which they shall be kept, the particulars to be reflected therein and the period for which they are required to be kept;
- (vi) restrictions in respect of the removal and export of any goods to which this section relates;
- (vii) all matters which by this section are required or permitted to be prescribed by rule;
- (viii) any other matter which the Commissioner may consider necessary and useful to regulate the lawful and prevent the unlawful distribution and consumption of any goods to which this section relates.

(e)(i) No goods referred to in paragraph (a)(i) shall be used for any other purpose than that for which they are removed from a customs and excise warehouse and in accordance with the conditions imposed by the Commissioner and those prescribed in the rules except with the prior permission of the Commissioner and on payment of the duties leviable in terms of Schedule No. 1 in respect of unmarked goods: Provided that if the Commissioner so permits, the goods may be mixed or blended with other goods in which case the provisions of subsection (7) shall *mutatis mutandis* apply to such goods.

(ii) If any goods referred to in paragraph (a)(i) are dealt with contrary to the provisions of this section and the rules, any person who had possession or

control of such goods at the time they were so dealt with, shall, in addition to any other liability incurred in terms of this Act, be liable in respect of such goods for payment of an amount calculated on the same basis as provided in subsection (4)(b) and the goods shall be liable to forfeiture.

(10) 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.

(11) The provisions of section 44A shall *mutatis mutandis* apply in respect of the liability incurred by any person in terms of this section.

(12) For the purposes of this section—
 'engine' referred to in subsection (4)(a) and (c)(ii), subsection (5)(a)(i) and subsection (6)(a)(iv) includes any engine of any machine, machinery, plant, equipment, apparatus, vehicle or ship, classifiable under any heading or subheading of Chapters 84 to 87 or 89 of Schedule 1;
 'invoice' means a document, whether in its original form or in a form approved by the Commissioner, and which contains such particulars as may be prescribed by rule;
 'vehicle' includes any vehicle classifiable under any heading or subheading of Chapters 86 and 87 of Schedule No. 1;
 'ship' includes any ship classifiable under any heading or subheading of Chapter 89 of Schedule No. 1.”.

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

53. Section 44 of the Customs and Excise Act 1964, is hereby amended by the addition of the following subsections:

“(11)(a) Notwithstanding anything to the contrary in this Act contained, but subject to the provisions of sections 47(10), 47(11), 65(7), 65(7A), 69(6) and (7) and subsection (12) there shall be no liability for any underpayment of duty on any goods where such underpayment is due to the acceptance of a bill of entry bearing any incorrect information, after a period of two years from the date of entry of such goods: Provided that such liability shall not cease—

- (i) if a false declaration has been made for the purposes of this Act; or
- (ii) in respect of any such underpayment discovered during any inspection, from a date two years prior to the date on which such inspection commenced.

(b) Where any period is prescribed in this Act for books, accounts or other documents in whatever form to be kept available for production to or inspection by an officer, any such period shall, subject to the provisions of paragraph (c), be calculated from a date prior to the date on which production is demanded or the inspection commences.

(c) Except as the Commissioner may otherwise determine in the circumstances of each case, where any false declaration has been made for the purposes of this Act, there shall be no limitation of the period of liability for

any underpayment of duty or the period for which any books, accounts or any other documents in whatever form available are required to be produced to or may be inspected by an officer.

(12) Any person who makes a false statement concerning the origin of goods or who makes use of any declaration or document containing any such statement as a result of which such person obtains entry of imported goods at a preferential rate of duty as specified in Part 1 of Schedule No. 1 in accordance with the provisions of any agreement contemplated in section 49 or 51 shall, for a period of three years prior to the date on which such false statement was made or made use of, in addition to any other liability incurred in terms of this Act, be liable for the payment of duties at the general rate specified in Part 1 of Schedule No. 1 in respect of the goods at the time of entry, except that the Commissioner may on good cause shown reduce such period.”.

Amendment of section 46 of Act 91 of 1964

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

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

“For the purposes of this Act, except where any agreement contemplated in section 49 or 51 otherwise provides, goods shall not be regarded as having been produced or manufactured in any particular territory unless—”;

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

“(d) for the purposes of any tariff preferences allowed by any country in respect of goods exported from the Republic other than tariff preferences provided in terms of agreements contemplated in section 49 or 51, prescribe by rule certificates of origin, the authority to print such certificates or other forms, the documents to be produced upon entry for exportation, particulars to be stated on such entry and any other requirements which may be necessary for the administration of such exports.”;

(c) by the addition of the following subsection:

“(5)(a) Any person entering any imported goods for which a general rate of duty is prescribed in any column of Part 1 of Schedule No. 1 and which are liable to any provisional payment as contemplated in section 57A or to anti-dumping duty imposed under section 56 or countervailing duty imposed under section 56A or safeguard duty imposed under section 57, shall produce to the Controller at the time of presenting the bill of entry a declaration of origin in respect of such goods in the form prescribed by the Commissioner by rule.

(b) Such declaration shall be issued by a person approved by the Commissioner.”.

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, section 4 of Act 44 of 1996 and section 63 of Act 30 of 1998

55. Section 47 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the insertion after subsection (1) of the following subsection:
“(1A)(a) Notwithstanding anything to the contrary in this Act contained,
 if any person is unable to calculate the correct amount of duty payable in terms of this Act, due to the fact that the computer system used to provide any information required for the calculation of such duty is not year 2000 compliant, the Commissioner may estimate the amount of duty payable on such basis as he considers reasonable in the circumstances.
- (b) The provisions of this section shall not be construed as absolving any person from otherwise complying with the provisions of this Act.”;
- (b) by the addition of the following subsection—
“(4)(a) Any rate of duty other than the general rate specified in any heading or subheading in any column of Part 1 of Schedule No. 1 shall apply to imported goods to which such heading or subheading relates if such goods qualified for the benefit of such rate in accordance with—
- (i) any provision of origin contained in any part of the schedule to the General Notes of Schedule No. 1 and any other provision referred to in section 48(1A) applicable to such column, any provision relating to tariff quotas, any applicable provision in the said Part 1 and any Note to such Part or schedule; and
- (ii) any rule made in terms of section 49 to give effect to any provision of origin of any agreement contemplated in the said section or in connection with any tariff quotas or any other condition or procedure that may be applicable to any goods specified in the said column;
- (b) The expression “any provision of origin” includes provisions relating to ‘originating products’, ‘originating status’, ‘rules of origin’ or like expressions and ‘goods obtained, produced or manufactured’ in any part of the said schedule to the General Notes of Schedule No. 1 and, unless the context otherwise indicates, any provision in this Act in respect of the origin of goods.”.
- (b) by the substitution for the words “Supreme Court” in paragraph (e) of subsection (9) of the words “High Court”.

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, section 39 of Act 45 of 1995 and section 64 of Act 30 of 1998

- 56.** Section 48 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) and for paragraph (a) of the following words and paragraph:
 "The Minister may from time to time by notice in the *Gazette* amend the General Notes to Schedule No. 1 and Part 1 of the said Schedule or substitute, or with retrospective effect, so amend the said Part 1 and amend Part 2 of the said Schedule in so far as it relates to imported goods—
- (a) in order to give effect to any agreement amending any agreement approved by section 2 of the Geneva General Agreement on Tariffs and Trade Act, 1948 (Act No. 29 of 1948) or to any agreement **[concluded under section 49]** or amendment of any agreement contemplated in section 49."
- (b) by the addition of the following subsection:
 "(1A)(a) The Minister may for the purposes of subsection (1)(a) and section 49(1)(a) or 49(1)(b), by like notice amend the General Notes to Schedule No. 1 to incorporate as part of such Notes a schedule thereto entitled "Origin provisions of trade agreements", containing in respect of any agreement contemplated in section 49—
- (i) in separate parts of such schedule, any such agreement or any protocol or other part or provision of such agreement, including any annex or appendix thereto, concerning the origin of goods;
- (ii) any instrument referred to in section 49(1)(b);
- (iii) notes to any such agreement, protocol or other part or provision which may specify—
- (aa) the agreement, protocol or other part or provision or instrument which governs goods entered according to the provisions of a particular column of Part 1 of Schedule No. 1;
- (bb) definitions;
- (cc) interpretation of words or phrases or substitutes for words or phrases;
- (dd) any condition or procedure or provision of this Act to be complied with to give effect to such provisions of origin;
- (ee) powers, duties or functions of the Commissioner or an officer;
- (iv) any amendment, with or without retrospective effect, to such schedule or notes for any reason as may be specified in such amendment;
- (b) No goods imported or exported shall qualify for the benefit of preferential tariff treatment in terms of such agreement unless they comply with such provisions of origin or any other provision of such agreement or of this Act governing the acquisition of origin, tariff quotas or any other condition which is to be fulfilled for the purposes of giving effect to such agreement."

Substitution of section 49 of Act 91 of 1964, as substituted by section 12 of Act 27 of 1997 and by section 65 of Act 30 f 1998

57. Section 49 of the Customs and Excise Act, 1964, is hereby substituted by the following section:

“(1)(a) Whenever Parliament has approved as contemplated in section 231 of the Constitution any agreement with the government of any country or countries or group of countries—

- (i) which includes the granting of preferential tariff treatment of goods and provisions of origin governing such treatment;
- (ii) concerning customs co-operation, including 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 or countries or group of countries;
- (iii) regulating transit trade and transit facilities; or
- (iv) which provides for any other matter which either expressly or by implication requires to be administered by customs legislation,

such agreement or any protocol or other part or provision thereof is enacted into law as part of this Act when published by notice in the *Gazette* in accordance with subsections (1) and (1A) of section 48 or subsection (5).

(b)(i) Any amendment of such agreement or any protocol or other part or provision thereof, any regulations for facilitating implementation, any agreed list of processing relating to originating status of goods, any other matter agreed upon between governments or by any committee of, or a body established by, the parties to such agreement or any decision or condition imposed by such committee or body, is likewise enacted into law as part of this Act when so published by notice in the *Gazette* as an amendment to such agreement or protocol or part or provision, as the case may be, with effect from any date that may be specified in such notice.

(ii) In this section and in section 48 ‘instrument’ includes according to the context any agreement or any amendment of such agreement or any protocol or other part or provision thereof or any document containing any regulation, list, decision or any matter agreed upon as contemplated in subparagraph (i).

(c) In this section and in section 47 and 48 ‘agreement’ includes, unless the context otherwise indicates, any treaty or convention.

(2)(a) The Commissioner shall obtain and keep two copies of such agreement, effect any amendments referred to in section 1(b) thereto, record the date the agreement or any such amendment entered into force and the date of any publication referred to in subsection (1).

(b) Whenever in any legal proceedings any question arises as to the contents of such agreement or as to the date on which such agreement or amendment entered into force or the date of such publication, a copy of such agreement as so amended and the record of such dates, shall be accepted as sufficient evidence of the contents thereof and the date of publication or the date on which such agreement or amendment entered into force.

(c) If the context so requires, the interpretation and application of any provision of any protocol or other part of such agreement referred to in this section shall be subject to other applicable provisions of such agreement.

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

- (a) the application of any provision of this Act relating to any importer, exporter, remover in bond, manufacturer, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods, goods obtained, produced or manufactured, goods in transit or removed in bond, due entry or security in respect or goods imported, exported, removed in bond or in transit, or any other provision or customs procedure or any power, duty or function in connection therewith, shall, for the purposes of giving effect to any agreement contemplated in section 49 or any protocol or other part or provision thereof, be subject to compliance with the provisions of such agreement or such protocol or other part or provision thereof, as the case may be;
- (b) any reference in this Act to any protocol or other part or provision of such agreement shall be deemed to include a reference to any instrument referred to in section 49(1)(b) applicable thereto and any provision of such agreement governing such protocol or other part or provision or instrument, as the case may be.

(4)(a) If any reference is made in such agreement to any convention, treaty or other agreement which is to be observed in ascertaining the originating status of goods obtained, produced or manufactured and imported or exported in specified instances, the Commissioner shall obtain and keep two copies of such convention, treaty or agreement, effect any amendment thereto and record the date the convention, treaty or agreement entered into force as advised by the Department of Trade and Industry.

(b) The provisions of subsection (2)(b) shall *mutatis mutandis* apply to the copies of such convention, treaty or other agreement.

(5) Where any such agreement or protocol or other part or provision thereof does not relate to the origin of goods as envisaged in section 48(1A), but otherwise by reference to customs or competent authorities or customs or domestic or national legislation or like expressions or in any other way expressly or by implication requires that it should be administered in terms of this Act, the Minister may publish by notice in the *Gazette* in Schedule No. 10 to this Act under the title: Agreements or protocols or other parts or provisions thereof contemplated in section 49(5)—

- (a) in separate parts of such Schedule, any such agreement or any protocol or other part or provision of such agreement including any annex or appendix thereto for the purposes of subsection (1)(a), in so far as it determines or affects or concerns or is required to be observed in connection with—
 - (i) mutual administrative and technical assistance in respect of co-operation in customs matters;
 - (ii) simplification and harmonization of trade documentation and procedures;
 - (iii) transit trade and transit facilities; and
 - (iv) any other matter whatever which so requires to be administered in terms of this Act in order to give effect to such agreement;
- (b) any instrument referred to in, and for the purposes of, subsection (1)(b);
- (c) notes to such Schedule No. 10 wherein may be specified—
 - (i) definitions;

- (ii) interpretations of words and phrases or substitutes for words and phrases;
- (iii) any condition or procedure or provision of this Act to be complied with in order to give effect to such agreement or protocol or part or provision of such agreement;
- (iv) powers, duties or functions of the Commissioner or an officer;
- (v) any amendment of Schedule No. 10 and any note thereto with or without retrospective effect for any reason as may be specified in such amendment.

(6) In administering the provisions of any agreement including any protocol or other part or provision thereof or any other instrument contemplated in this section and the application of any procedure to give effect thereto, the Commissioner may, notwithstanding anything to the contrary in this Act contained,—

- (a) decide on or determine any matter in connection with the provisions so administered which includes any decision or determination in respect of—
 - (i) any heading in Part 1 or any item of any other Part of Schedule No. 1 applicable to any goods imported or exported, obtained produced or manufactured or used in the production or manufacture of any goods, or the customs value of any such imported goods;
 - (ii) the first ascertainable price of goods where the customs value is not known or cannot be ascertained;
 - (iii) any provision which governs or specifies any procedure concerning—
 - (aa) the origin or proof of origin of goods imported or exported;
 - (bb) the importation or exportation or production or manufacture of goods and the ex-factory price of goods;
 - (cc) tariff quotas;
 - (dd) rendering mutual and technical assistance in respect of customs co-operation;
 - (ee) transit carriage of goods, transit trade and transit facilities;
 - (ff) requirements in connection with agency where any person is represented in the importation or exportation of any goods involving proof of origin or in any matter relating to the transit carriage of goods, transit trade or transit facilities;
 - (gg) the approval of exporters;
 - (iv) any other power, duty or function or procedure provided in any such agreement or protocol or other part or provision thereof which requires either expressly or by implication customs administrative action to give effect thereto.
 - (v) the convention, treaty or agreement referred to in subsection (4);
 - (vi) a binding origin determination and any procedure in connection therewith.
- (b) make rules—

- (i) concerning any matter referred to in paragraph (a) including such convention, treaty or agreement;
 - (ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation;
 - (iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;
 - (iv) to regulate the application, determination, entry of goods and other procedures in connection with binding origin determinations;
 - (v) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with to give effect to such agreement, protocol or other part or provision thereof;
 - (vi) to delegate subject to section 3(2) any power, duty or function to any officers or other persons;
 - (vii) any other matter which may be necessary or useful for the purposes of administering such provisions;
- (c) subject to such conditions as the Commissioner may in each case impose, enter into any agreement with any person, with the concurrence of any exporter, producer or manufacturer, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin to give effect to such agreement;

(7)(a) Notwithstanding the provisions of section 47(9), 65(4) or 66(9), any determination of any heading or item or the customs value of goods imported shall, if such determination concerns goods used in the production or manufacture of any goods, or goods produced or manufactured therefrom, or any other goods, of which the origin is being determined, be made in terms of this section.

(b) For the purposes of any appeal against a decision or determination of the Commissioner in administering any of the provisions referred to in this section—

- (i) any decision or determination shall, subject to appeal to court, be deemed to be correct for the purposes of this Act, and where any amount is payable in consequence thereof, such amount shall remain payable as long as such decision or determination remains in force: Provided that if it involves disputes with other customs authorities the processes for dispute settlement provided in the agreement shall be followed;
- (ii) subject to the provisions of subsection (8), any decision or determination may be amended or withdrawn and a new decision or determination made from the date the decision or determination was given, but such a decision or determination shall *mutatis mutandis* be subject to the provisions of section 76B if any refund of duty is involved;
- (iii) an appeal against any such decision or determination shall be to the division of the High Court having jurisdiction to hear appeals in the area wherein the decision or determination was made or the goods in question were entered for home consumption or exported.

(c) Such appeal shall, subject to section 96(1), be prosecuted within a period of one year from the date of the decision or determination.

(8)(a) For the purposes of any binding origin determination, unless the context otherwise indicates—

'applicant' means a person who has applied to the Commissioner for a binding origin determination and has valid reasons to do so;

'binding origin determination' means an origin determination binding on the Commissioner when it is issued to the applicant after compliance with the provisions of this subsection and the rules;

'holder' means the person in whose name the binding origin determination is issued.

(b) A binding origin determination may be issued by the Commissioner on the written request of an applicant in respect of goods—

- (i) imported from a country or countries or group of countries with which agreements have been concluded as contemplated in this section providing for preferential rates of duty on such goods; and
- (ii) for which certificates of origin have been issued by, or invoice declarations made by an exporter approved by, the customs authorities of the country or countries or group of countries concerned.

(c) A binding origin determination favourable to the holder shall be annulled by the Commissioner if it was issued on the basis of incorrect or incomplete information, where—

- (i) the applicant knew or should reasonably have known that the information was incorrect and incomplete; and
- (ii) such determination could not have been made on the basis of correct or complete information.

(d) Such annulment shall take effect from the date the determination was made and the holder shall be notified of the annulment.

(e) A binding origin determination shall be binding on the Commissioner as against the holder only in respect of—

- (i) the determination of the origin of goods for the purposes of the agreement concerned; and
- (ii) goods which are entered as required in terms of section 38(1) after the date on which such determination was supplied by the Commissioner.

(f) A binding origin determination shall be valid for a period of three years from the date of issue, but shall cease to be valid where—

- (i) the binding determination no longer conforms to the provisions of the agreement or of this Act on which it is based as a result of any amendment of such provisions;
- (ii) an appeal against the determination of the Commissioner as provided in this section succeeds;
- (iii) it is no longer compatible with—
 - (aa) any interpretation of the provisions of such agreement in respect of the goods in question in the originating country;
 - (bb) any final judgment of the High Court or a judgment of the Supreme Court of Appeal;
- (iv) provided the holder is informed in advance, it is revoked or amended in the following circumstances—
 - (aa) except in the case referred to in paragraph (c), the Commissioner shall revoke or amend any determination

- favourable to the holder if any one or more of the conditions laid down for its issue were not or are no longer fulfilled;
- (bb) the Commissioner may revoke any determination favourable to the holder if such holder fails to fulfil any obligation imposed under such determination;
- (cc) the Commissioner may revoke or amend any determination if it was issued in error or any determination unfavourable to the holder if for any reason the goods are subsequently proved to qualify for a favourable determination.
- (g) The date on which a binding determination ceases to be valid shall be—
- (i) in the case of paragraph (f)(i), the date any amendment to such agreement is enacted in this Act or in the case of any other provision of this Act, such provision is so amended; or
- (ii) in the case of paragraphs (f)(ii) and (iii)(bb), the date of the judgment and in the case of paragraph (f)(iii)(aa) the date of publication of such interpretation.
- (h)(i) Notwithstanding the provisions of paragraphs (f) and (g), if the Commissioner so permits, the holder of a binding origin determination may still use such determination for a period of six months from any date specified therein, or until the period of three years expires, whichever is the earlier date, provided—
- (aa) such holder concluded binding contracts for the purchase or sale of the goods in question on the basis of such determination before any such date; and
- (bb) such determination is used solely for determining import duties.
- (ii) Any holder who wishes to make use of the possibility of invoking such determination as provided in subparagraph (i), shall notify the Commissioner and provide the necessary supporting documents to enable a check to be made whether the conditions specified in the said subparagraph (i) have been satisfied.”.

Insertion of section 54A in Act 91 of 1964

58. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 54:

“Special provisions regarding the importation of beer^¾

54A.(1)(a) No imported beer made from malt shall be sold or disposed of for home consumption except in a container which indicates the brand name, the alcoholic strength by volume and quantity of such beer.

(b) Every invoice of such beer shall reflect the name, the alcoholic strength by volume, the type of container, the quantity of beer in each container and the total quantity to which such invoice relates.

(2) If the alcoholic strength by volume or the quantity of any imported beer in any container bearing an indication of a brand name, alcoholic strength by volume and quantity is found, when tested and reported on as provided in the rules for section 36, to exceed the alcoholic strength by volume, after deduction of the tolerance prescribed by such rules, or the quantity indicated on such container or invoice, the importer or owner shall be liable for the duty on the full quantity of beer imported in the consignment from which the

container was tested according to the alcoholic strength by volume or quantity ascertained in respect of such container and the consignment shall be liable to forfeiture.

(3) Notwithstanding anything to the contrary in this Act contained, the provisions of this section shall *mutatis mutandis* apply to any beer manufactured in any other territory of the common customs area brought into the Republic."

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

Amendment of section 60 of Act 91 of 1964, as amended by section 4 of Act 85 of 1968, as substituted by section 20 of Act 105 of 1969, as substituted by section 11 of Act 86 of 1982, as added by section 25 of Act 59 of 1990, as substituted by section 9 of Act 19 of 1994 and as amended by section 44 of Act 45 of 1995

59. Section 60 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Commissioner may, subject to **[an appeal to the Minister]** review by the High Court—

- (a) refuse any application for a new licence or refuse any application for a renewal of a licence if the applicant has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for a licence; or
- (b) refuse any application for a new licence or refuse any application for a renewal of any licence or cancel or suspend for a specified period any licence if the applicant or the holder of such licence or any employee of such applicant or holder, as the case may be—
 - (i) has contravened or failed to comply with the provisions of this Act; or
 - (ii) has been convicted of an offence under this Act; or
 - (iii) has been convicted of an offence involving dishonesty; or
 - (iv) fails to comply with any condition or obligation imposed by the Commissioner in respect of such licence.

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

60. Section 64B of the Customs and Excise Act, 1964 is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections—

"(1) No person shall, for the purposes of [section 38] this Act for reward make entry or deliver a bill of entry relating to any goods on behalf of any [importer or exporter of goods] principal contemplated in section 99(2) [as the case may be] unless licensed as a clearing agent in terms of subsection (2).

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

(b) The Commissioner may, subject to such conditions or obligations as he may in each case impose or prescribe by rule, licence any person applying therefor **[and approved by him]** as such a clearing agent **[for making entry of or delivery a bill of entry relating to, goods on behalf of an importer or exporter of goods, as the case may be].**

(b) by the addition of the following subsections:

“(5) Such clearing agent shall be liable in respect of any entry made or bill of entry delivered as contemplated in section 99(2).

(6) Such clearing agent shall disclose the name and category of the principal referred to in section 99(2) on such bill of entry and if such agent does not so disclose or makes or delivers a bill of entry where the name of another such agent or his own name is stated as the importer, exporter, remover in bond or other principal, as the case may be, he shall be liable for the fulfilment of the obligations imposed on such principal in terms of this Act.

(7) No security provided by such agent shall be utilised or accepted as security for the fulfilment of any obligations under this Act of any other agent.”.

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of 1978, section 7 of Act 110 of 1979, as substituted by section 13 of Act 86 of 1982, section 8 of Act 101 of 1985, as inserted by section 8 of Act 52 of 1986, as substituted by section 48 of Act 45 of 1995, and section 5 of Act 44 of 1996

61. Section 65 of the Customs and Excise Act, 1964, is hereby amended—

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

“(a) [If the transaction value of any imported goods cannot ascertained in terms of section 66 or has been incorrectly ascertained by the importer,] The Commissioner may determine the transaction value of any imported goods, which is required to be ascertained or may be determined as provided in section 66, and such determined value [which] shall, subject to a right of appeal to the court, be deemed to be the value for customs duty purposes of the goods.”;

(b) by the substitution for the words “Supreme Court” in paragraph (a) of subsection (6) of the words “High Court”.

Amendment of section 66 of Act 91 of 1964, as substituted by section 21 of Act 112 of 1977, as amended by section 8 of Act 110 of 1979, as

substituted by section 14(1) of Act 86 of 1982, as substituted by section 5 of Act 69 of 1988, as amended by section 10 of Act 68 of 1989, as substituted by section 26 of Act 59 of 1990, and as substituted by section 49 of Act 45 of 1995, as amended and substituted by section 49 of Act 45 of 1995

62. Section 66 of the Customs and Excise Act, 1964 is hereby amended by the substitution for the words preceding paragraph (a) of subsection (9) of the following words:

“(9) Where the transaction value of any imported goods cannot be ascertained in terms of the provisions of subsection (8), the Commissioner may determine such value under section 65(4)(a) on the basis of a previous determination or, where there is no previous determination, by such application as he may deem reasonable of any manner of ascertaining the transaction value in terms of subsection (1), (4), (5), (7) or (8), but no such determination shall be based on—“.

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

63. Section 69 of the Customs and Excise Act, 1964 is hereby amended:

- (a) by the substitution for the words “Supreme Court” in paragraph (a) of subsection (5) of the words “High Court”;
- (b) by addition of the following subsections:

“(6) Save where—

- (a) a determination has been made under subsection (3) or (4); or
- (b) any false declaration is made for the purposes of subsection (3) or (4),

there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect value for excise duty purposes, after a period of two years from the date of entry of such goods.

(7) Notwithstanding the provisions of subsection (6), any determination made under subsection (3) following upon an inspection of the books or documents of any manufacturer, wholesaler or purchaser or any seller or buyer contemplated in subsections (1) or (2), as the case may be, shall be deemed to have come into operation, in respect of the goods in question entered for excise purposes, two years prior to the date on which the inspection commenced.”.

Amendment of section 73 of Act 91 of 1964, as amended substituted by section 24 of Act 112 of 1977, section 9 of Act 110 of 1979, and section 51 of Act 45 of 1995

64. Section 73 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following subsection:

“(3) The Commissioner may for the purposes of any agreement contemplated in section 49 or 51, by rule—

- (a) publish arrangements in connection with amounts to be used in currencies in respect of goods imported or exported between the Republic and the country or countries or group of countries concerned;
- (b) prescribe any measures applicable to the implementation of such arrangements.”.

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, section 8 of Act 98 of 1993 and section 68 of Act 30 of 1998

65. Section 80 of the Customs and Excise Act, 1964, is hereby amended?

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

"(o) contravenes the provisions of section 4(13)(b), 18(13), 18A(9), 20(4)*bis*, 35A(4), 37(9), 37A(1)(c), 37A(4)(a), 60(1), 63(1), 75(7A), 75(19), 88(1)(bA), 113(2), 113(8)(c), 114(2A), 114(2B); or"; and

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

“(q) contravenes of fails to comply with any agreement contemplated in section 49 of 51.”.

Substitution for section 85 of Act 91 of 1964, as substituted by section 4 of Act 68 of 1973, as amended by section 16 of Act 52 of 1986, section 12 of Act 105 of 1992, and substituted by section 57 of Act 45 of 1995, and section 7 of Act 44 of 1996

66. The following section is hereby substituted for section 85 of the Customs and Excise Act, 1964:

“Beer of higher alcoholic strength than registered^{3/4}

85. Any manufacturer of beer of whom or which any container of beer not marked for export as contemplated in section 36(9) [in whose customs and excise warehouse or on whose delivery vehicle beer packed for sale in the common customs area] is found to contain beer of an alcoholic strength by volume higher than [such] the strength [specified in the tariff item of Part 2 of Schedule No. 1 and] registered in terms of section 36(2), after deduction of any tolerance provided in the rules relating to that section, shall

be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture.”.

Amendment of section 86A of Act 91 of 1964, as inserted by section 69 of Act 30 of 1998

- 67.** Section 86A of the Customs and Excise Act, 1964 is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
 “(1) Notwithstanding the provisions of section 4, the Commissioner may from time to time publish **[by notice in the Gazette a list of persons who have]** for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of [any] such offence in terms of —“; and
- (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:
 “(2) Every such **[list] publication** may specify—”.

Amendment of section 87 of Act 91 of 1964

- 68.** Section 87 of the Customs and Excise Act, 1964 is hereby amended:
- (a) by the substitution for the proviso to subsection (1) of the following proviso:
 "Provided that forfeiture shall not affect liability to any other penalty or punishment which has been incurred under this Act or any other law or **[entitle any person to a refund of] liability for any unpaid** duty or charge **[paid]** in respect of such goods.”;
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) Any—
- (a) ship, vehicle, container or other transport equipment used in the removal or carriage of any goods liable to forfeiture under this Act or constructed, adapted, altered or fitted in any manner which renders it capable of use for concealing goods;
- (b) goods conveyed, mixed, packed or found with any goods liable to forfeiture under this Act on or in any such ship, vehicle, container or other transport equipment; and
- (c) ship or vehicle in which goods liable to forfeiture under this Act are used as fuel or in any other manner,
- shall be liable to forfeiture wheresoever and in possession of whomsoever found.”.

Substitution for section 93 of Act 91 of 1964, as substituted by section 14 of Act 95 of 1965, and section 15 of Act 85 of 1968, and amended by section 31 of Act 112 of 1977

69. The following section is hereby substituted for section 93 of the Customs and Excise Act, 1964:

“Remission or mitigation of penalties and forfeiture.”^¾

93. The Commissioner may on good cause shown, direct that any ship, vehicle, container or other transport equipment plant, material or goods detained or seized or forfeited under this Act be delivered to the owner thereof, subject to payment of any duty which may be payable in respect thereof and any charges which may have been incurred in connection with the detention or seizure or forfeiture, and to such conditions (including conditions providing for the payment of an amount [equal to] not exceeding the value for duty purposes of such ship, vehicle, container or other transport equipment, plant, material or goods plus any unpaid duty thereon) as he deems, fit, or may mitigate or remit any penalty incurred under this Act, on such conditions as he deems fit: Provided that if the owner accepts such conditions, he shall not thereafter be entitled to institute or maintain any action for damages on account of the detention, seizure of forfeiture.”.

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, section 62 of Act 45 f 1995 as amended by section 71 of Act 30 of 1998

70. Section 99 of the Customs and Excise Act, 1964, is hereby amended:

- (a) by the substitution for the words preceding subparagraph (i), (ii) & (iii) of the proviso in paragraph (a) of subsection (2) of the following words:
“Provided that, except if such principal has not been disclosed or the name of another agent or his own name is stated on any bill of entry as envisaged in section 64B(6) or the principal is a person outside the Republic, such agent or person shall cease to be so liable if he proves that—”;
- (b) by addition of the following paragraph:
 “(c) For the purposes of the proviso to paragraph (a) a principal outside the Republic shall be deemed to include the consignee in a country outside the Republic shown on a bill of entry for removal in bond of imported goods.”.

Insertion of section 99A in Act 91 of 1964

71. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 99:

“Consultant and agent who is not a clearing agent required to register—
99A. (1) Any person who is not a licensed clearing agent referred to in section 64B or a legal practitioner shall not, from a date to be specified by the

Commissioner by notice in the Gazette, represent any principal referred to in section 99(2) as a consultant or agent for the purpose of transacting any business on behalf of such principal in customs and excise matters unless such a person is registered with the Commissioner;

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

Amendment of section 101 of Act 91 of 1964, as substituted by section 18 of Act 85 of 1968, as inserted by section 12 of Act 98 of 1980, and as substituted by section 63 of Act 45 of 1995

72. Section 101 of the Customs and Excise Act, 1964, is hereby amended by addition after subsection (2A) of the following subsection:

"(2B) Any person referred to in subsection (1)(a) shall in addition so keep and produce on demand any data created by means of a "computer" as defined in section 1 of the Computer Evidence Act, 1983 (Act No 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for purposes of backing up such data."

Amendment of section 114 of Act 91 of 1964, as substituted by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, as inserted by section 36 of Act 112 of 1977, as substituted by section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990, and as amended by section 34 of Act 34 of 1997

73. Section 114 of the Customs and Excise Act, 1964, is hereby amended—
(a) by the addition to paragraph (b) of subsection (1) of the following proviso:

"Provided that notwithstanding anything to the contrary in any other law contained, the Commissioner may, on good cause shown, direct at any time on such conditions as the Commissioner may in each case impose, that such thing, of which the person by whom the debt is due is not the owner, be delivered with the concurrence of such person, to the owner thereof on payment of the debt due to the State secured by the value of such thing at the time of such delivery and any charges that have been incurred in connection with any detention in terms of subsection (2): Provided further that if such thing is so delivered no person shall be entitled to institute or maintain any action for damages on account of any action by the Commissioner or an officer in respect of such thing."

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

"(2)(a) The Commissioner or an officer may detain anything referred to in subsection (1)(a) by sealing, marking, locking, fastening or otherwise securing or impounding it on the premises where it is found or by removing it to a place of security determined by the Commissioner: Provided that the Commissioner may allow any such thing to be used

under such conditions as he may impose in each case which conditions shall include that the person who is allowed to use such thing shall not enter into any agreement whereby—

- (i) ownership or possession of such thing is transferred or relinquished in any manner whatsoever to any other person;
- (ii) such thing is pledged or otherwise hypothecated in favour of any other person;

(b)(i) Any agreement entered into contrary to those conditions shall be null and void.

(ii) If such person so enters into any such agreement or otherwise deals with such thing contrary to any conditions imposed by the Commissioner an officer may detain such thing wheresoever and in possession of whomsoever found and remove it to a place of security whereafter the Commissioner may dispose thereof at any time as contemplated in subsection (1)(b) if the debt has not been paid.

(iii) The person by whom the debt is due shall be liable for all costs and expenses incurred by and charges due to the Commissioner in respect of such detention or removal of the thing concerned.

(iv) No person shall be entitled to institute or maintain any action for damages on account of any action by the Commissioner or an officer in respect of such thing for the purposes of this subsection."

- (c) by the substitution for the words preceding subsection (2A) of the following words:

"Except with the permission of the Commissioner, no person shall remove—".

Substitution for section 118 of Act 91 of 1964

74. The following section is hereby substituted for section 118 of the Customs and Excise Act, 1964:

"118. The Minister may, subject to such conditions as the he may in each case impose—

(a) delegate any of the powers to be exercised or functions to be performed by him in terms of the provisions of sections 48, 51, 52, 53, 56, 56A, 57, 60(3), 75(15), 99(4), 105 and 113(4) to the Deputy Minister of Finance."

(b) and for such period as he may specify in each case, delegate any of his powers under the Act (except any power relating to the amendment of any Schedule) or the making of any regulation to the Commissioner."

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

75. 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 1998 shall

not lapse by virtue of the provisions of section 48(6), 56(3) or 75(16) of that Act.

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

76. Section 1 of the Stamp Duties Act, 1968, is hereby amended by the substitution for the definition of "makelaar" in subsection (1) of the Afrikaans text of the following definition:

"makelaar' iemand wat die besigheid van koop en verkoop van handelseffekte dryf en wat 'n lid van 'n [effektebeurs] aandelebeurs in die Republiek of 'n praktiserende lid van die Suid-Afrikaanse Instituut van Aandelemakelaars is;"

Amendment of section 3 of Act 77 of 1968

77. Section 3 of the Stamp Duties Act, 1968, is hereby amended by the addition of the following subsections:

"(3) The Minister may by notice in the *Gazette* make known for general information that in terms of a taxation proposal tabled by him in the National Assembly, the tariff of duty specified in Schedule 1 is to be increased or decreased to a tariff set forth in that notice and proposal.

(4) The increased or decreased rate of duty so set forth shall, until an Act of Parliament is promulgated in the *Gazette* by which effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of duty in respect of the execution of any instrument on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased tariffs, as the case may be: Provided that where no Act of Parliament to give effect to such proposal or in which other provision is made is promulgated within six months from the date of publication of such notice, the increased or decreased rate so set forth shall lapse on the last day of the six month period.

(5) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (3), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein."

Amendment of section 19 of Act 77 of 1968, as inserted by section 8 of Act 118 of 1984 and substituted by section 6 of Act 69 of 1989

78. Section 19 of the Stamp Duties Act, 1968, is hereby amended by the substitution for the words preceding the proviso by the following words:

“The duty payable in terms of Item 6 of Schedule 1 in respect of any debit entry in an account shall not be denoted by means of stamps but shall be paid by the banker or person carrying on the credit card scheme concerned or by the **[mutual building society or building society concerned or the Post Office Savings Bank]** institution or Postbank, as the case may be, within a period of 21 days after the end of the month in which that entry is made or, where he satisfies the Commissioner that by reason of the accounting procedures adopted by him the duty cannot conveniently be paid within that period, within such further period as the Commissioner may allow, and if he fails to do so he shall, in addition to the amount of that duty, pay a penalty equal to 10 per cent of that amount for every month or part thereof reckoned from the end of the period within which that amount was payable as provided in this section to the date of payment of that amount:”.

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, section 7 of Act 136 of 1991 and section 80 of Act 30 of 1998

79. Section 23 of the Stamp Duties Act, 1968, is hereby amended—

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

“(a) any alteration of share capital or shares in terms of section 75, or **[a reduction of share capital]** any acquisition of shares in terms of section **[83 or 84]** 85 of the Companies Act, 1973 (Act 61 of 1973);”;

and

(b) by the substitution for paragraph (b) of subsection (12A) of the following paragraph:

“(b) ‘cancelled’ means cancelled in whole or in part and includes the cancellation of shares acquired in terms of section 85 of the Companies Act, 1973, and ‘cancellation’ shall be construed accordingly;”.

Amendment of section 30 of Act 77 of 1968, as amended by section 15 of Act 97 of 1993 and section 20 of Act 27 of 1997

80. Section 30 of the Stamp Duties Act, 1968, is hereby amended—

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

“(1)**[(a)]** Any duty or penalty payable under this Act shall be a debt due to the State **[and may notwithstanding anything to the contrary contained in any law relating to magistrates’ courts, if the total amount thereof does not exceed one thousand rand, be recovered by action in the court of the magistrate having jurisdiction in the**

area in which the person liable for the duty or penalty resides or carries on business.

(b) Any such magistrate's court may on its own motion or at the request of either party to the proceedings reserve any question of law that may arise thereon for the decision of the provincial or local division of the High Court having jurisdiction, and the question shall be stated by the magistrate in the form of a special case and may be argued before and shall be determined by the division concerned, which may give such directions in the matter and may make such order as to costs as it may deem fit.]"; and

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

"(2) [Every such action shall be at the suit of the Commissioner] The provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), relating to—

(a) the recovery of tax as contained in section 91; and

(b) the power to appoint an agent as contained in section 99, of that Act, shall apply *mutatis mutandis* to the duty, interest and penalties imposed in this Act."

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

81. Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (c) of the definition of "debit entry" of the following paragraph:

"(c) [a transmission account as defined in section 1 of the Mutual Building Societies Act, 1965 (Act 24 of 1965), at a mutual building society as defined in section 1 of that Act or a transmission account as defined in section 1 of the Building Societies Act, 1986 (Act 82 of 1986), at a building society defined in section 1 of that Act or a transmission account as defined in section 1 of the Banks Act, 1965 (Act 23 of 1965), at a banking institution as defined in section 1 of that Act or a telebank account that is maintained at the Post Office Savings Bank and that has been computerised] any other account at—

(i) an institution which carries on the business of a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990); or

(ii) the Postbank operated in terms of the provisions of Chapter VI of the Postal Services Act, 1998 (Act No. 124 of 1998),

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

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van

1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994 and section 86 of Act 30 of 1998

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

- (a) by the deletion of paragraph (xvi); and
- (b) by the substitution for subitems (aa) and (bb) of item (ii) of paragraph (e) of the *Exemptions from the duty under paragraph (3)* of the Afrikaans text of the following subitems:
 - “(aa) dat daardie takregister gehou word in ’n land waarin daar ’n erkende [effektebeurs] aandelebeurs is;
 - (bb) dat handelseffekte wat deur dié maatskappy of regspersoon uitgereik is en wat van dieselfde aard is as die handelseffekte waarvan die registrasie van oordrag geskied, gereeld op daardie [effektebeurs] aandelebeurs gekoop en verkoop word; en”;

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

Amendment of section 98 of Act 61 of 1973, as amended by section 4 of Act 64 of 1977, section 15 of Act 69 of 1989, section 6 of Act 35 of 1998 and section 15 of Act 37 of 1999

83. Section 98 of the Companies Act, 1973, is hereby amended by the deletion of the proviso to subsection (2).

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

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996 and section 23 of Act 27 of 1997

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

- (a) by the substitution for paragraph (b) of the definition of “commercial rental establishment” of the following paragraph:
 - “(b) accommodation in any house, flat, apartment or room (other than accommodation in respect of which the provisions of paragraph (a) or (bA) apply) which is regularly or systematically let or held for letting as residential accommodation for continuous periods not

- exceeding 45 days in the case of each occupant of such house, flat, apartment or room, if the total annual receipts and accruals from the letting thereof have exceeded **[R24 000]** R48 000 or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; or”;
- (b) by the substitution for subparagraph (ii) of paragraph (bA) of the definition of “commercial rental establishment” of the following subparagraph:
“(ii) derives total annual receipts and accruals from the letting of all such houses flats, apartments, rooms, caravans, houseboats, caravan and camping sites which exceed **[R24 000]** R48 000 or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; and”
- (c) by the insertion of the word “or” at the end of paragraph (c) and by the insertion of the following paragraph after paragraph (c) of the definition of “commercial rental establishment”:
“(d) any place of detention, managed in terms of an agreement with a public authority, by any other person”;
- (d) by the substitution for paragraph (vi) of the proviso to the definition of “enterprise” of the following paragraph:
“(vi) the activity of underwriting insurance business by Underwriting Members of Lloyd’s of London, to the extent that insurance is provided to residents of the Republic, shall be deemed **[not]** to be the carrying on of an enterprise;” and
- (e) by the substitution for the definition of “welfare organisation” of the following definition:
“welfare organisation’ means any association not for gain which is registered under the **[Fund-raising Act, 1978 (Act No 107 of 1978)] Nonprofit Organisations Act, 1997 (Act No 71 of 1997)**, if it carries on or intends to carry on activities consisting of the provision of food, meals, board, lodging, clothing or other necessities, comforts or amenities to aged or indigent persons, children or physically or mentally handicapped persons.”.
- (2) Subsection (1)(d) shall come into operation on 1 April 2000.

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, section 24 of Act 27 of 1997 and section 87 of Act 30 of 1998

- 85.** Section 2 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for paragraph (k) of subsection (1) of the following paragraph:
“(k) The buying and selling of futures contracts and option contracts as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989) or any similar contract which is not a standardised contract as defined in the said Act for the sole reason that dealings in respect thereof does not take place on a financial market: Provided that this

paragraph shall not apply to the buying and selling of such similar contracts unless the buyer and the seller have agreed in writing that it is not their intention that delivery of the underlying things will take place to the buyer of the contract.”;

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

“(v) ‘long-term insurance policy’ means any policy of insurance issued in the ordinary course of carrying on long-term insurance business as defined in **[section (1)(1) of the Insurance Act, 1943 (Act No 27 of 1943) section (1)(1) of the Long-Term Insurance Act, 1998 (Act No 52 of 1998)]**”; and

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

“(b) the transfer of any interest in or a right to be paid money that is, or is to be, owing by any person under a rental agreement where, as a result of such transfer, output tax in relation to the supply of goods under the rental agreement would not be or become attributable to any tax period for the purposes of section 16(3); or”.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996 and section 25 of Act 27 of 1997

86. Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the first and second provisos to subsection (2) of the following proviso:

“Provided that—

(i) where such right is so deemed to be supplied that supply shall be deemed to be a supply of a service;

(ii) **[Provided further that]** this subsection shall not apply to any such goods or right to the extent that [in respect of the acquisition of which by such vendor] a deduction in terms of section 16(3) has not been allowed or will not be allowed, in respect of the acquisition or use by such vendor, where such vendor on or before 30 June 2000—

[(i) was registered pursuant to an application for registration under section 23 due to a *bona fide* error on the part of any person; and

(ii) has on or before 30 June 1992 requested the Commissioner in writing to cancel his registration and such request is granted by the Commissioner.]

(aa) ceases to be a vendor for the sole reason that the total value of taxable supplies made by that vendor in the preceding period of 12 months has not exceeded R20 000; or

- (bb) ceases to be a vendor in respect of a commercial rental establishment or a residential rental establishment for the sole reason that the total receipts and accruals derived from that commercial rental establishment or residential rental establishment in the preceding period of 12 months have not exceeded R48 000;
- (iii) this subsection shall not apply to fixed property to the extent that a deduction in terms of section 16(3) has not been allowed or will not be allowed in respect of that fixed property or any improvements thereto, where a vendor, on or before 30 June 2000, requests the Commissioner in writing, in the circumstances contemplated in section 24(2), to cancel his registration.”;
- (b) by the insertion of the following subsection after subsection (2):
“(2A) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceased to be a vendor solely as a consequence of the circumstances contemplated in paragraph (ii) of the proviso to subsection (2), the tax payable to the Commissioner in respect of that deemed supply, if the amount thereof is in excess of R3 000, shall be paid to the Commissioner in so many equal monthly instalments as the Commissioner may allow, the last of which shall not be paid later than 31 October 2000.”; and
- (c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
“(a) For the purposes of this Act, any lay-by agreement (as defined in Government Notice No R1234 of 13 June 1980, as amended by Government Notice No R1814 of 29 August 1980, issued in terms of section 9 of the [Price Control Act, 1964 (Act No 25 of 1964)] Sale and Service Matters Act, 1964 (Act No 25 of 1964) whereby goods are sold for a consideration not exceeding R10 000 and are reserved by deposit for delivery when the purchase price or a determined portion thereof is paid shall not be deemed to be a supply of goods or services unless and until the goods are delivered to the purchaser.”.

Amendment of Section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996 and section 27 of Act 27 of 1997

87. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (i) of the proviso to subsection (2) of the following paragraph:

- “(i) there shall be excluded from such consideration the value of any postage stamp as defined in section 1 of the Post Office Act, 1958 (Act No 44 of 1958), when used in the payment of consideration for any service supplied by the [Department of Posts and Telecommunications] postal company as defined in section 1 of the Post Office Act, 1958.”.

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

- 88.** (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) the supplier has supplied the goods (being movable goods) in terms of a sale or instalment credit agreement and— **[has exported the goods]**
- (i) the supplier has exported the goods in the circumstances contemplated in paragraphs (a), (b) or (c) of the definition of “exported” in section (1); or
- (ii) the goods have been exported by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in Part 2 of an export incentive scheme referred to in paragraph (d) of the definition of “exported” in section 1: Provided that where a supplier has supplied the goods to the recipient in the Republic otherwise than in terms of this subparagraph, such supply shall not be charged with tax at the rate of zero per cent: Provided further that, where the goods have been removed from the Republic by the recipient in accordance with the provisions of the export incentive scheme referred to in paragraph (d) of the definition of “exported” in section 1, such tax shall be refunded to the recipient in accordance with the provisions of section 44(9); or”;
- (b) by the insertion of the word “and” at the end of subparagraph (bb) of paragraph (i) of the proviso to paragraph (e) of subsection (1) and by the insertion of the following subparagraph after subparagraph (bb) of paragraph (i) of the proviso:
- “(cc) in respect of supplies on or after 1 January 2000, such supplier and such recipient have at the time of conclusion of the agreement for the disposal of the enterprise or part, as the case may be, agreed in writing that the consideration agreed upon for that supply is inclusive of tax at the rate of zero per cent;”;
- (c) by the substitution for paragraph (hB) of subsection (1) of the following paragraph:
- “(hB) the goods consist of anti-knock preparations referred to in **[Heading No 38.11.11.20 of PART A]** subparagraph 1.4.4 of paragraph 1.4 of Schedule 1; or”;
- (d) by the substitution for subparagraph (ii) of paragraph (g) of subsection (2) of the following subparagraph:
- “(ii) goods temporarily admitted into the Republic from an export country which are exempt from tax on importation under **[Item**

- 470.01, 470.02, 470.03 or 480.00] paragraph 1.12** of Schedule 1; or”;
- (e) by the substitution for the words preceding subparagraph (aa) in subparagraph (ii) of paragraph (l) of subsection (2) of the following words:
- “(ii) in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which—“;
- (f) by the substitution for subparagraph (iii) of paragraph (l) of subsection (2) of the following subparagraph:
- “(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] rendered**,”; and
- (g) by the insertion of the following paragraph after paragraph (p) in subsection (2):
- “(q) the services are in terms of section (8)(5) deemed to be supplied to a public authority or local authority to the extent that the payment contemplated in that section is made from donor funds granted under any international agreement to which the Government of the Republic is a party.”.
- (2) Subsection (1)(c) and (d) shall come into operation on a date to be fixed by the Minister in the *Gazette*.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 29 of Act 97 of 1993, section 15 of Act 20 of 1994 and section 30 of Act 27 of 1997

- 89.** (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for proviso (iii) to subsection (1) of the following proviso:
- “(iii) goods imported from or via Botswana, Lesotho, Swaziland or [and] Namibia shall be declared and tax paid **[to an officer designated by the Commissioner for Customs and Excise on entry into the Republic in accordance with such procedures and at such place as the said Commissioner may prescribe by rule]** as prescribed by the Commissioner in Chapter XIIA of the Rules to the Customs and Excise Act.”;
- (b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
- “(b) where such goods **[are not required to be so entered, the amount of]** have their origin in Botswana, Lesotho, Swaziland or Namibia and are imported from such a country, the value **[which would have been used for customs duty purposes had they been subject to customs duty]** shall be the value as contemplated in paragraph (a): Provided that such value shall not be increased by the factor of 10 per cent”;
- (c) by the substitution for subsection (3) of the following subsection:

“(3) The importation of the goods set forth in Schedule 1 to this Act shall be exempt from the tax imposed in terms of section 7 (1) (b): Provided that **[for the purposes of Part A of that Schedule^{3/4}**

(i) the exemption in respect of the importation into the Republic of such goods as fall under the Items 409.01, 409.02 and 409.06 set out in the said Part shall not apply if at the time of export of such goods—

(aa) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or

(bb) the supply of those goods was made before the commencement date and that supply would have been charged with tax at the rate of zero per cent in terms of section 11, if the supply had taken place on or after the commencement date;

(iii)] the exemption in respect of the importation of goods contemplated in [Items 409.04 and 409.07 of the said Part] paragraphs 1.11 and 1.15 shall apply only to the extent of the value of the goods sent from the Republic on the day they left the Republic.”;

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

“(4) Where tax is payable in respect of the importation of goods into the Republic **[and such goods are not required to be entered in terms of the Customs and Excise Act and tax]** but has not been paid **[to the Commissioner for Customs and Excise]** when the goods were imported, the importer shall within **[30]** 7 days after the importation of the goods—

(a) furnish the Commissioner with a declaration (in such form as the Commissioner may prescribe) containing such information as may be required; and

(b) calculate the tax payable on the relevant value at the rate of tax in force on the date of importation of the goods and pay such tax to the Commissioner.

[Provided that this subsection shall not apply in respect of the importation (other than the importation of any motor vehicle) by a vendor in the circumstances contemplated in this subsection, if the tax payable would be allowable as a deduction in terms of section 16 (3) (a) (iii) or section 16 (3) (b) (ii).]”; and

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

“(5) **[Except as contemplated in subsection (4),]** The Commissioner and the **[Postmaster-General]** postal company may make such arrangements as they may deem necessary—

(a) for the collection (in such manner as they may determine) by the **[Postmaster-General]** postal company on behalf of the Commissioner of the value-added tax payable in terms of this Act in respect of the importation of any goods into the Republic, and

(b) exchange of such information as is necessary for the carrying out of such arrangements.”.

(2) Clause (c) of subsection (1) shall come into operation on a date to be fixed by the Minister in the *Gazette*.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997 and section 91 of Act 30 of 1998

- 90.** Section 16 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for paragraph (d) of subsection (2) of the following paragraph:
- “(d) a bill of entry or other document prescribed in terms of the Customs and Excise Act together with the receipt for the payment of the tax as issued by RSA Customs and Excise in relation to the said importation have [has] been delivered in accordance with that Act and are [is] held by the vendor making that deduction, or by his agent as contemplated in section 54 (3), at the time that any return in respect of that importation is furnished.”;
- (b) by the insertion of the following paragraph after paragraph (d) of subsection (3):
- “(dA) an amount equal to the tax fraction of any amount paid by the supplier of the services as contemplated in section 8(13) to the National Lottery Distribution Trust Fund, established in terms of section 21 of the Lotteries Act, 1997 (Act No 57 of 1997);”;
- (c) by the substitution for subparagraph (i) of paragraph (b) of subsection (4) of the following subparagraph:
- “(i) to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price has been received by the vendor during that tax period for any supply of goods or services in respect of which the provisions of section 9(1), (3)(a), (b) or (d) or (4) or 21(2)(a) or (6) apply (other than a supply in respect of which the provisions of section 10(4) apply);”.

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997 and section 92 of Act 30 of 1998

- 91.** Section 17 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (i) of the proviso to subsection (1) of the following paragraph:
- “(i) where the intended use of goods or services in the course of making taxable supplies is equal to not less than **[90] 95** per cent of the total intended use of such goods or services, the goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of making taxable supplies.”.

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, section 37 of Act 27 of 1997 and section 93 of Act 30 of 1998

92. Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the proviso to the definition of symbol “C” in subsection (4) of the following provisos:

“Provided that where the intended use of goods or services (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17(2)) is equal to not less than **[90] 95** per cent of the total intended use of such goods or services such percentage shall be deemed to be 100 per cent; and”.

Amendment of section 18A of Act 89 of 1991 as inserted by section 24 of Act 136 of 1992, and amended by section 19 of Act 20 of 1994 and section 24 of Act 37 of 1996

93. Section 18A of the Value-Added Tax Act, 1991, is amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that where the intended use of such enterprise, part, goods or services, as the case may be, in the course of making taxable supplies is equal to not less than **[90] 95** per cent of the total intended use of such enterprise, part, goods or services, as the case may be, the enterprise, part, goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of consumption, use or supply in the course of making taxable supplies.”.

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, section 35 of Act 27 of 1997 and section 94 of Act 30 of 1998

- 94.** Section 20 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding the proviso of the following words:

“(1) Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10)) to a recipient, **[being a registered vendor,]** shall, at the request of the recipient, provide the recipient, within 21 days after receiving that request, with a tax invoice containing such particulars as are specified in this section:”;
 - (b) by the insertion of the word “or” at the end of paragraph (b) in subsection (7) and by the insertion of the following paragraph after paragraph (b):

- “(c) that a tax invoice is not required to be issued, but that the particulars specified in subsections (4) or (5) be issued in some other manner.”; and
- (c) by the substitution in subsection (8) for proviso (A) of subparagraph (i) of paragraph (a) of the following proviso:
- “(A) shall verify such name and identity number of any such natural person with reference to his identity document, as contemplated in section 1 of the **[Identification Act, 1986 (Act No 72 of 1986)]** Identification Act, 1997 (Act No 68 of 1997), and, where the value of the supply is R1 000 or more, retain a photocopy of such name and identity number appearing in such identity document; or”.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994 and section 37 of Act 27 of 1997

- 95.** Section 23 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded **[R150 000]** R300 000”;
- (b) by the substitution for the words preceding paragraph (i) of the proviso to subsection (1) of the following words:
- “Provided that the total value of the taxable supplies of the vendor within the period of 12 months referred to in subparagraph (a) or the period of 12 months referred to in subparagraph (b) shall not be deemed to have exceeded or be likely to exceed the amount of **[R150 000]** R300 000, where the Commissioner is satisfied that the said total value will exceed or is likely to exceed such amount solely as a consequence of—“; and
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) Notwithstanding the provisions of subsections (1) and (2), every person who satisfies the Commissioner that, on or after the commencement date—
- (a) that person is carrying on any enterprise as contemplated in paragraph (b)(ii), (iii) or (c) of the definition of ‘enterprise’ in section 1; or
- (b) that person is carrying on any enterprise other than as contemplated in paragraph (b)(ii) or (iii) or (c) of the definition of ‘enterprise’ in section 1 and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R20 000; or
- (c) that person intends to carry on any enterprise from a specified date, where that enterprise will be supplied to him as a going concern and the total value of taxable supplies made by the supplier of the going concern from carrying on that enterprise or

- part of the enterprise which will be supplied has exceeded R20 000 in the preceding period of 12 months; or
- (d) that person is continuously and regularly carrying on an activity which, in consequence of the nature of that activity, can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time and where the total value of taxable supplies to be made can reasonably be expected to exceed R20 000 in a period of 12 months,
- may apply to the Commissioner in the approved form for registration under this Act and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.”.

Amendment of section 24 of Act 89 of 1991, as amended by section 21 of Act 20 of 1994

- 96.** Section 24 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the deletion of the proviso to subsection (3); and
- (b) by the substitution for subsection (5) of the following subsection:
 “(5) Where the Commissioner is satisfied that a vendor **[is not carrying on any enterprise]** no longer complies with the requirements for registration as contemplated in section 23(3) the Commissioner may cancel such vendor’s registration with effect from the last day of the tax period during which the Commissioner is so satisfied, or from such other date as may be determined by the Commissioner.”.

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998

- 97.** Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following paragraph after paragraph (e):
 “(f) the appointment or resignation of a representative vendor as contemplated in section 48(1).”.

Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997 and section 97 of Act 30 of 1998

- 98.** Section 32 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subparagraph (iv) in paragraph (a) of subsection (1) of the following subparagraph:
 “(v) in terms of section 43(5) and (6) notifying a member, shareholder or trustee of a vendor that he is required to provide surety in respect of the vendor’s liability for tax from time to time; or”.

Amendment of Section 33A of Act 89 of 1991, as inserted by section 36 of Act 136 of 1991

99. Section 33A of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) the appeal is lodged against an assessment of the Commissioner, and the amount of the tax in dispute does not exceed **[R20 000]** R30 000 (or any other amount which the Minister of Finance may from time to time fix by notice in the Gazette); or”.

Amendment of section 43 of Act 89 of 1991, as amended by section 99 of Act 30 of 1998

100. Section 43 of the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following subsections:

“(5) Notwithstanding the provisions of subsection (1) the Commissioner may, having regard to the circumstances of any vendor which is not a natural person, require of any or all of the members, shareholders or trustees involved in the management of such vendor to enter into a contract of suretyship in respect of the vendor’s liability for tax which may arise from time to time.

(6) Such suretyship shall be for such amount and for such period as the Commissioner may direct and for the duration thereof, the said members, shareholders or trustees may jointly and severally with the vendor be held liable for paying the tax imposed on the vendor.”.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997 and section 100 of Act 30 of 1998

101. Section 44 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(ii) where the amount that would be so refunded to the vendor is determined to be **[R10]** R25 or less, the amount so determined shall not be refunded in respect of the said tax period but shall be carried forward to the next succeeding tax period of the vendor and be accounted for as provided in section 16(5).”;

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

“(b) the amount to be refunded is **[R10]** R25 or more; or”; and

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

“(4) Where the amount that would be refunded under subsection (2) is determined to be **[R10]** R25 or less, the amount so determined shall not be refunded but shall be credited to the vendor’s account and be accounted for as provided in section 16(5).”.

Amendment of section 48 of Act 89 of 1991

102. Section 48 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (7) of the following subsection:

“(8) Every representative vendor contemplated in section 48(1) shall remain responsible for performing the duties imposed on him by this Act until such time as he notified the Commissioner in writing that he no longer acts as representative vendor, or until the Commissioner has been notified of the name and address of another person who shall act as representative vendor.”.

Amendment of section 54 of Act 89 of 1991, as amended by section 40 of Act 136 of 1991, section 34 of Act 136 of 1992, section 25 of Act 20 of 1994 and section 46 of Act 27 of 1997

103. Section 54 of the Value-Added Tax Act, 1991, is hereby amended—

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

“the agent shall maintain sufficient records to enable the name and address and registration number of the principal to be ascertained and in respect of all supplies made on or after 1 January 2000 by or to the agent on behalf of the principal, the agent shall notify the principal within 21 days of the end of the calendar month during which the supply was made or received, of the particulars contemplated in paragraphs (e), (f) and (g) of section 20(4) in relation to such supplies”;

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

“(4) For the purposes of subsection (5), the expression “auctioneer” means a vendor carrying on an enterprise which comprises or includes the supply by him by auction **[or by sale on a national fresh produce market as defined in section 1 of the Commission for Fresh Produce Markets Act, 1970 (Act No 82 of 1970)]**, of goods as an auctioneer or agent for or on behalf of another person (hereinafter in this section referred to as a principal) and includes an agent, fresh produce agent and livestock agent as defined in section 1 of the Agricultural Produce Agents Act, 1992 (Act No 12 of 1992).”; and

(c) by the insertion of the following proviso at the end of subsection (5):

“Provided that the auctioneer or agent shall maintain the particulars envisaged in section 20(8) as if the principal made a supply of second-hand goods to him, not being a taxable supply.”.

Amendment of section 57D of Act 89 of 1991, as amended by section 49 of Act 27 of 1997

104. Section 57D of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of subsection (9) of the following paragraph:

“(a) Any person may apply to the relevant division of the **[Supreme Court High Court]** for the return of any information, documents or things seized under this section.”.

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

105. Section 58 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the insertion of the following paragraph after paragraph (ℓ):
- “(m) being an agent or auctioneer as contemplated in section 54, fails to comply with any of the requirements of the provisions of section 54(3) or the proviso to section 54(5),”; and
- (b) by the substitution for the words following paragraph (m) of the following words:
- “shall be guilty of an offence and liable on conviction to a fine **[not exceeding R4 000]** or to imprisonment for a period not exceeding **[12 months]** 24 months or to both such fine and such imprisonment.”.

Amendment of section 59 of Act 89 of 1991, as amended by section 40 of Act 97 of 1993

106. Section 59 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words following paragraph (i) of subsection (1) of the following words:
- “shall be guilty of an offence and liable on conviction to a fine **[not exceeding R10 000]** or to imprisonment for a period not exceeding **[24 months]** 60 months or to both such fine and such imprisonment.”.

Amendment of section 60 of Act 89 of 1991, as amended by section 42 of Act 136 of 1991 and section 50 of Act 27 of 1997

107. Section 60 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (b) of subsection 1 of the following paragraph:
- “(b) to cause a refund to him by the Commissioner **[in terms of section 44(1)]** of any amount of tax (such amount being referred to hereunder as the excess) which is in excess of the amount properly refundable to him **[under the said section, read with section 16(5),]** before applying section 44(6).”.

Amendment of section 62 of Act 89 of 1991, as amended by section 103 of Act 30 of 1998

108. Section 62 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
- “(1) Notwithstanding the provisions of section 6, the Commissioner may from time to time publish **[by notice in the Gazette a list of persons who have]** for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where

- such person has been convicted of **[any]** such offence in terms of—“;
and
- (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:
“(2) Every such **[list published]** publication in terms of this section **[shall]** may specify—“.

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, paragraph 24 of Government Notice 2695 of 8 November 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996 and section 53 of Act 27 of 1997

109. (1) Schedule 1 to the Value-Added Tax Act, 1991 is hereby amended by the substitution for schedule 1 in its entirety of the following schedule:

Schedule 1

(SECTION 13 (3) OF THIS ACT)

Exemption: Certain Goods Imported into the Republic

The goods in respect of which the exemption under the provisions of section 13 (3) shall apply, shall be as hereinafter set forth.

*Exemption
code
(for VAT
purposes on
the
declaration
form)*

1. Goods imported into the Republic that are exempt from the levying of tax to the extent indicated below, regardless of whether or not customs duty is payable or a rebate of customs duty is granted in terms of the Customs and Excise Act:
 - 1.1 Personal effects and sporting and recreational equipment, new or used, imported either as accompanied or unaccompanied passengers' baggage by non-residents of the Republic for their own use during their stay in the Republic.
 - 1.2 Personal effects and sporting and recreational equipment, new or used, exported by residents of the Republic for their own use while abroad and subsequently reimported either as accompanied or unaccompanied passengers' baggage by such residents.
 - 1.3 Goods imported as accompanied passengers' baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic to the following extent:
 - (i) Wine not exceeding 2 litres per person
 - (ii) Spirituous and other alcoholic beverages, a total quantity not

- exceeding 1 litre per person
- (iii) Cigarettes not exceeding 400 and cigars not exceeding 50 per person
- (iv) Cigarette or pipe tobacco not exceeding 250 g per person
- (v) Perfumery not exceeding 50 ml and toilet water not exceeding 250 ml per person
- (vi) Additional goods, new or used, imported of a total value not exceeding R2 000 per person excluding goods referred to in paragraph numbers (i), (ii), (iii), (iv) and (v).

1.4 The following goods:

- 1.4.1 Petroleum oil and oils obtained from bituminous minerals, crude.
- 1.4.2 Petrol.
- 1.4.3 Distillate fuels.
- 1.4.4 Anti-knock preparations: based on lead compounds.
- 1.4.5 Traveller's cheques and bills of exchange, denominated in a foreign currency.
- 1.4.6 Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries.

1.5 The following foodstuffs:

- 1.5.1 Brown bread as defined in Regulation 1 of the Regulations in terms of Government Notice No. R.577 published in Government Gazette No. 13074 of 15 March 1991.
- 1.5.2 Maize meal graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal.
- 1.5.3 Samp, not further prepared or processed.
- 1.5.4 Mealie rice, not further prepared or processed.
- 1.5.5 Dried silo screened mealies or dried mealies for human consumption not further prepared or processed or packaged as seed, but excluding pop corn (*zea mays everta*).
- 1.5.6 Dried beans, whole, split, crushed or in powder form but not further prepared or processed or where packaged as seed.
- 1.5.7 Lentils, dried, whole, skinned or split.
- 1.5.8 Pilchards or sardinella supplied in tins or cans consisting mainly of such products regardless of whether flavoured, seasoned or preserved in oil, but excluding such products as are supplied as pet food or sardines supplied in tins or cans.
- 1.5.9 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 Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), or any regulation under that Act:
 - High-fat milk powder
 - Full-fat milk powder
 - Medium-fat milk powder
 - Low-fat milk powder
 - Fat-free milk powder,
 provided the fat or protein content of such milk powder consists solely of milk fat or milk protein.
- 1.5.10 Dairy powder blend, being any dairy powder blend which falls

under the following classifications determined by the Minister of Agriculture under the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), or any regulation under that Act:

High-fat dairy powder blend

Full-fat dairy powder blend

Medium-fat dairy powder blend

Low-fat dairy powder blend

Fat-free dairy powder blend.

- 1.5.11 Rice, whether husked, milled, polished, glazed, parboiled or broken.
 - 1.5.12 Vegetables, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding frozen, dehydrated, dried, canned or bottled vegetables or such vegetables as are described under separate subparagraphs to this paragraph.
 - 1.5.13 Fruit, not cooked or treated in any manner except for the purposes of preserving such fruit in its natural state, but excluding frozen, dehydrated, dried, canned or bottled fruit and nuts.
 - 1.5.14 Vegetable oil, marketed and supplied for use in the process of cooking food, but excluding olive oil.
 - 1.5.15 Milk, being the milk of cattle, sheep or goats that has not been concentrated, condensed, evaporated, sweetened, flavoured, cultured or subjected to any other process other than homogenization or preservation by pasteurization, ultra-high temperature treatment, sterilization, chilling or freezing.
 - 1.5.16 Cultured milk, being cultured milk as classified under the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), with the following class designation:
 - Cultured high-fat milk
 - Cultured full-fat milk
 - Cultured low-fat milk
 - Cultured fat-free milk.
 - 1.5.17 Brown wheaten meal, being pure, sound wheaten meal, but excluding separated wheaten bran, wheaten germ and wheaten semolina.
 - 1.5.18 Eggs, being raw eggs laid by hens of the species gallus domesticus, whether supplied in their shells or in the form of egg pulp being raw pulp consisting of the yolk and white which is obtained from such egg after the shells have been removed.
 - 1.5.19 Edible legumes and pulse of leguminous plants, dried, whole, split, crushed, skinned or in powder form, but not further prepared or processed or where packaged as seed or such pulse as are described under separate subparagraphs to this paragraph.
- 1.6 Bona fide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed R400 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars)) consigned by natural persons abroad to natural persons in the Republic.
 - 1.7 Household furniture, other household effects and other removable articles, (including equipment necessary for the exercise of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco

goods), the bona fide property of a natural person (including a returning resident of the Republic after an absence of six months or more) and members of his family, imported for own use on change of his residence to the Republic: Provided that the said goods are not disposed of within a period of six months as from the date of entry.

- 1.8 Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in the Republic.
- 1.9 Used property of a person normally resident in the Republic who dies while temporarily outside the Republic.
- 1.10 Goods temporarily exported from the Republic which are, at the time of export, registered as such with the Controller of Customs and Excise (in such form as the Commissioner may prescribe), and thereafter returned to the exporter, no change of ownership having taken place, and which can be identified on reimportation.
- 1.11 Goods sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place, and can be identified on reimportation: Provided that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic.
- 1.12 Goods temporarily admitted"—“
 - (i) for processing, provided such goods do not become the property of any person of the Republic;
 - (ii) for repair, cleaning or reconditioning;
 - (iii) as parts for goods temporarily imported for repair, cleaning or reconditioning;
 - (iv) which are cleared in terms of a permit issued by the Director-General: Trade and Industry, on the recommendation of the Board of Trade and Industry, for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export;
 - (v) subject to exportation in the same state:

Provided that the Controller of Customs and Excise ensures that the tax is secured by the lodging of a provisional payment or bond (except where the Commissioner otherwise direct, or in the circumstances contemplated in rule 120A.01(c) to the Customs and Excise Act).
- 1.13 Goods which are shipped or conveyed to the Republic for trans-shipment or conveyance to any export country: Provided that the Controller of Customs and Excise ensures that the tax is secured by the lodging of a provisional payment or bond (except where the Commissioner otherwise direct, or in the circumstances contemplated in rule 120A.01(c) to the Customs and Excise Act).
- 1.14 Packing containers or pallets, which are the property of a vendor, exported from the Republic by the vendor and thereafter returned to the vendor in the Republic, without having been subjected to any process of manufacture or manipulation and no change of ownership having taken place.
- 1.15 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the

Director-General: Trade and Industry on the recommendation of the Board of Trade and Industry, provided—

- (i) the specific permit is obtained before the temporary exportation of the goods;
- (ii) if the ownership of the compensating products is transferred prior to entry for customs purposes, such goods are entered in the name of the person who exported the goods; and
- (iii) any additional conditions which may be stipulated in the said permit, are complied with:

Provided that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic.

1.16 Goods for Heads of State, Diplomatic and other Foreign Representatives.

1.17 Goods imported—

- (a) for the relief of distress of persons in cases of famine or other national disaster;
- (b) under any technical assistance agreement; or
- (c) in terms of an obligation under any multilateral international agreement to which the Republic is a party;

Provided that—

- (i) the importation of any goods under this paragraph shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland; and
- (ii) goods imported under this paragraph shall not be sold or disposed of to any party who is not entitled to any privileges under this paragraph, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Director-General: Trade and Industry.

1.18 Goods imported for any purpose agreed upon between the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland: Provided that—

- (i) the provisions of this paragraph shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland has been obtained for the application of such provisions in respect of every such consignment or quantity or class of goods;
- (ii) the importation of any goods under this paragraph shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic and Botswana, Lesotho, Namibia or Swaziland; and
- (iii) goods imported under this paragraph shall not be sold or disposed of to any party who is not entitled to any privileges under this paragraph, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Commissioner.

2. Any of the following items imported into the Republic in respect of which the Controller of Customs and Excise has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act, granted permission that entry need not be made:

- (i) Containers temporarily imported;
- (ii) human remains;
- (iii) goods which in the opinion of the Commissioner are of no commercial value;
- (iv) goods imported under an international carnet; or

- (v) goods of a value for customs duty purposes not exceeding R200, and on which no such duty is payable in terms of Schedule No. 1 to the said Act.
3. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value for duty purposes under the Customs and Excise Act not exceeding R100 per parcel.
 4. Goods, being gold coins imported as such and which the Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section.
 5. Goods forwarded unsolicited and free of charge by a non-resident to—
 - (a) a public authority or a local authority; or
 - (b) any association not for gain which satisfies the Commissioner that such goods will be used by that association exclusively—
 - (i) for educational, religious or welfare purposes; or
 - (ii) in the furtherance of that association's objectives directed to the provision of educational, medical or welfare services or medical or scientific research; or
 - (iii) for issue to or treatment of indigent persons, free of charge.
- (2) Subsection (1) will come into operation on a date to be fixed by the Minister in the *Gazette*.

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, section 33 of Act 20 of 1994 and section 104 of Act 30 of 1998

110. PART B of Schedule 2 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for Items 12 and 13 of paragraph 1 of the following paragraphs:

- | | |
|----------|--|
| “Item 12 | Vegetables, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding <u>frozen</u> , dehydrated dried, canned or bottled vegetables or such vegetables as are described under separate Items in this PART. |
| Item 13 | Fruit, not cooked or treated in any manner except for the purposes of preserving such fruit in its natural state, but excluding <u>frozen</u> , dehydrated, dried, canned or bottled fruit and nuts.”. |

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 1996, section 55 of Act 27 of 1997 and section 105 of Act 30 of 1998

111. Section 60 of the Income Tax Act, 1993, is hereby amended—

- (a) by the substitution for the words following paragraph (b) of the definition of “distributable share” in subsection (1) of the following words:
 “and such shares are, in pursuance of a distribution in specie thereof in the course of an unbundling transaction, to be listed on a **[licensed]** stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), within six months of such distribution in specie, or within such further period as the Commissioner, having regard to the circumstances of the case, may approve;”;
- (b) by the substitution for the definition of “distribution in specie” in subsection (1) of the following definition:
 “‘distribution in specie’, in relation to an unbundling transaction, means a distribution by an unbundling company or intermediate company of distributable shares in the course of an unbundling transaction whether such distribution occurs by means of a dividend (including a liquidation dividend), a total or partial reduction of capital (including any share premium), **[or]** a redemption of redeemable preference shares or acquisition of shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973);
- (c) by the substitution for the definition of “listed company” in subsection (1) of the following definition:
 “‘listed company’ means a company the equity share capital of which is listed on a **[licensed]** stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985);”.

Amendment of section 39 of Act 20 of 1994, as amended by section 7 of Act 37 of 1995, section 35 of Act 37 of 1996, section 56 of Act 27 of 1997

112. Section 39 of the Taxation Laws Amendment Act, 1994, is hereby amended—

- (a) by the substitution of the expression “R250 million” in the definition of “holding company” of the expression “R75 million”; and
- (b) by the substitution for the definition of “listed company” in subsection (1) of the following definition:
 “‘listed company’ means a company the equity share capital of which is listed on a **[licensed]** stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985);”.

Insertion of section 1A in Act 31 of 1998

113. The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 1:

“1A. Administration of Act^{3/4} The Commissioner must administer this Act.”.

Insertion of section 2A in Act 31 of 1998

114. The following section is hereby inserted after section 2 of the Uncertificated Securities Tax Act, 1998:

“2A. Notice of variation of rate of tax.”^{3/4} (1) The Minister may by notice in the Gazette make known for general information that in terms of a taxation proposal tabled by him in the National Assembly, the rate of tax specified in section 2 is to be increased or decreased to a rate set forth in that notice and proposal.

(2) The increased or reduced rate of tax so set forth shall, until an Act of Parliament is promulgated in the *Gazette* by which effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of tax in respect of every issue of, or transfer of beneficial ownership in, any security on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased rate of tax, as the case may be: Provided that where no Act of Parliament to give effect to such proposal or in which other provision is made is promulgated within six months from the date of publication of such notice, the increased or decreased rate so set forth shall lapse on the last day of the six month period.

(3) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (1), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of the National Assembly and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein”.

Amendment of section 7 of Act 31 of 1998

115. Section 7 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Where, in addition to any amount of tax which is payable by any person in terms of this Act, an amount of penalty or interest is payable by such person in terms of section 8 of 10 of this Act, any payment made by that person in respect of such tax, penalty or interest which is less than the total amount due by such person in respect of such tax, penalty and interest shall, for the purposes of this Act, be deemed to be made—

- (a) in respect of such penalty;
- (b) to the extent to which such payment exceeds the amount of such penalty, in respect of such interest; and
- (c) to the extent to which such payment exceeds the sum of the amounts of such penalty and interest, in respect of such tax.”

Amendment of section 12 of Act 9 of 1999

116. Section 12 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), if any levy remains unpaid after the last day for payment thereof as contemplated in section 6(2) or ~~7(3)~~(4), a penalty of 10

per cent of that unpaid amount is payable in addition to the interest contemplated in section 11.”.

Repeal of Laws

117. Decree No. 3 (Immovable Property Taxation) of 1991 of the Republic of Transkei is hereby repealed.

Short title and commencement

118. (1) This Act is called the Revenue Laws Amendment Act, 1999.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax in terms of the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2000.