

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

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

(MINISTER OF FINANCE)

[B 19—2005]

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

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

To amend the Transfer Duty Act, 1949, so as to adjust the rates of duty; to amend the Income Tax Act, 1962, to fix the rates of normal tax payable by persons other than companies in respect of taxable income for the years of assessment ending 28 February 2006 and by companies in respect of taxable income for the years of assessment ending during the 12 months ending on 31 March 2006; to increase the primary and secondary rebates; to further regulate the taxation of travel allowances; to further regulate the exemption in respect of interest and foreign dividends; to further regulate the depreciation of certain assets; to further regulate the provisions relating to small business corporations; to further regulate the provisions relating to the incurral of interest; and to further regulate the provisional tax payments to take foreign tax credits into account; to amend the Customs and Excise Act, 1964, so as to further regulate the underpayment of duty on certain goods; to increase the amount of air passenger departure tax; to amend Schedule No. 1; and to provide for the continuation of certain amendments to the Schedules; to amend the Stamp Duties Act, 1968, so as to repeal the stamp duties in respect of debit entries and instalment credit agreements; and to provide for an exemption from duty in respect of the issue of marketable securities by certain companies; to amend the Regional Services Councils Act, 1985, so as to provide for a prescription period in respect of assessments; and to amend the KwaZulu and Natal Joint Services Act, 1990, so as to provide for a prescription period in respect of assessments; to amend the Value-Added Tax Act, 1991, so as to amend the provisions relating to zero-rating; to amend the provisions relating to penalties and interest to make provision for failure to pay tax when liability for environmental levies arises; and to make provision for liability of public authorities and certain public entities for tax and limitation of refunds; to amend the Skills Development Levies Act, 1999, so as to amend an exemption; to amend the Revenue Laws Amendment Act, 2004, so as to amend a commencement date; and to provide for the tax treatment of shares acquired upon conversion of non-proprietary exchanges; and to amend the Taxation Proposals on customs and excise duties Tabled in Parliament by the Minister of Finance on 23 February 2005; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 40 of 1949, as substituted by section 2 of Act 77 of 1964 and amended by section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act 87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993, section 1 of Act 37 of 1995, section 9 of Act 37 of 1996, section 2 of Act 32 of 1999, section 2 of Act 30 of 2002, section 31 of Act 12 of 2003 and section 1 of Act 16 of 2004 5

1. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for subparagraphs (i), (ii) and (iii) of paragraph (b) of the following subparagraphs:

- “(i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R150 000]** R190 000;
- (ii) 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R150 000]** R190 000 but does not exceed **[R320 000]** R330 000; and
- (iii) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R320 000]** R330 000.”; and 15

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any property acquired or interest or restriction in any property renounced on or after that date.

Fixing of rates of normal tax in terms of Act 58 of 1962 20

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

- (a) the taxable income of any person (other than a company) for the year of assessment ending on 28 February 2006; and
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2006, 25

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

Amendment of section 6 of Act 58 of 1962, as inserted by section 5 of Act 104 of 1980 and amended by section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001, section 11 of Act 30 of 2002, section 35 of Act 12 of 2003 and section 6 of Act 16 of 2004 30 35

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

- “(a) a primary rebate, an amount of **[R5 800]** R6 300; and
- (b) a secondary rebate, if the taxpayer was or, had **[the taxpayer]** he or she lived, would have been **[at least]** 65 years of age or older on the last day of the year of assessment, an amount of **[R3 200]** R4 500.”. 40

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003 and section 6 of Act 32 of 2004 45 50

4. Section 8 of the Income Tax Act, 1962, is hereby amended— 55

- (a) by the substitution in subsection (1) for the expression “14 000” wherever it occurs in paragraphs (aa) and (bb) of the second proviso to subparagraph (ii) of paragraph (b) of the expression “16 000”; and
- (b) by the insertion in subsection (1) of the following subparagraph after subparagraph (iii) of paragraph (b):
- “(iiiA) where the portion of the allowance or advance which is claimed by the recipient to be actually expended is calculated based on accurate data furnished by the recipient in respect of any vehicle—
- (aa) in the case of a vehicle that is being leased, the total amount of payments in respect of that lease may not in any year of assessment exceed an amount of the fixed cost determined by the Minister in the notice contemplated in subparagraph (ii), for the category of vehicle used;
- (bb) in any other case—
- (A) the wear and tear of that vehicle must be determined over a period of seven years from the date of original acquisition by that recipient and the cost of the vehicle must for this purpose be limited to R360 000, or such other amount determined by the Minister by notice in the *Gazette*; and
- (B) the finance charges in respect of any debt incurred in respect of the purchase of that vehicle must be limited to an amount which would have been incurred had the original debt been R360 000, or such other amount determined by the Minister in terms of subitem (A);”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004 and section 14 of Act 32 of 2004

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

- (a) by the substitution in subsection (1) for the words in item (aa) of subparagraph (xv) of paragraph (i) preceding the proviso of the following words:
- “(aa) so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed [R1 000] R2 000;”;
- (b) by the substitution in subsection (1) for subitems (A) and (B) of item (bb) of subparagraph (xv) of paragraph (i) of the following subitems:
- “(A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of [R16 000] R22 000; or
- (B) in any other case, the amount of [R11 000] R15 000.”.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965,

section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004 and section 16 of Act 32 of 2004

6. Section 11 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in paragraph (e) for the words preceding the proviso of the following words:
 - “(e) save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, ~~or~~ 12C or 12E) used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment.”; and
- (b) by the substitution in paragraph (e) for paragraph (viii) of the proviso of the following paragraph:
 - “(viii) where in respect of any machinery, implement, utensil or article acquired by the taxpayer on or after 21 June 1993, a deduction or allowance was previously granted to a connected person in relation to the taxpayer under this paragraph or section 12B(1), ~~or~~ 12C(1) or 12E, or under section 27(2)(d) prior to the deletion thereof by section 28(b) of the Income Tax Act, 1991 (Act No. 129 of 1991), the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost of such machinery, implement, utensil or article to such connected person or the market value thereof as determined on the date upon which it was acquired by the taxpayer.”.

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993, section 13 of Act 28 of 1997, section 17 of Act 59 of 2000 and section 11 of Act 16 of 2004

7. Section 12B of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (4) of the word “and” at the end of paragraph (c) and the addition of the word “or” at the end of paragraph (e); and
- (b) by the addition to subsection (4) of the following paragraph:
 - “(f) any asset in respect of which an allowance has been granted to the taxpayer under section 12E.”.

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002 and section 30 of Act 45 of 2003

8. Section 12C of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b) ~~or~~

section 12E]) which was or is brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or”;

- (b) by the addition in subsection (3) of the word “or” at the end of paragraph (c); and
- (c) by the addition to subsection (3) of the following paragraph:
“(d) any asset in respect of which an allowance has been granted to the taxpayer under section 12E.”.

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003 and section 31 of Act 45 of 2003

9. (1) Section 12E of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:
 - “(1A) Where any machinery, plant, implement, utensil, article, aircraft or ship (hereinafter referred to as ‘the asset’), other than an asset in respect of which subsection (1) applies, is acquired by a small business corporation under an agreement formally and finally signed by every party to the agreement on or after 1 April 2005 and that asset would, but for the provisions of this section, have qualified for a deduction under section 11(e), 12B or 12C, the deduction allowable must, subject to the requirements of that section, be equal to—
 - (a) 50 per cent of the cost of that asset, which is allowable in the year of assessment during which that asset is or was so brought into use for the first time;
 - (b) 30 per cent of that cost in the immediately succeeding year of assessment; and
 - (c) 20 per cent of that cost in the year of assessment immediately succeeding the year of assessment contemplated in subparagraph (b).”;
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) Any expenditure (other than expenditure referred to in section 11(a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this section from one location to another **[shall] must—**
 - (a) where the taxpayer is or was entitled to a deduction in respect of that asset under subsection (1A) in that year and one or more succeeding years, be allowed to be deducted from his or her income in equal instalments in that year and each succeeding year in which that deduction is allowable; or
 - (b) in any other case, be allowed to be deducted from that taxpayer’s income in that year.”;
- (c) by the deletion of subsection (3A);
- (d) by the substitution in subsection (4) for the expression “R5 million” wherever it occurs in subparagraph (i) of paragraph (a) of the expression “R6 million”; and
- (e) by the substitution in subsection (4) for paragraph (d) of the following paragraph:
 - “(d) ‘personal service’ , in relation to a company or close corporation, means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science **[which,] if—**
 - (i) that service is performed personally by any person who holds an interest in [the] that company or close corporation; and
 - (ii) that company or close corporation does not throughout the year of assessment employ at least four full-time employees (other than any employee who is a shareholder of the company

or member of the close corporation, as the case may be, or who is a connected person in relation to a shareholder or member), who are on a full-time basis engaged in the business of that company or close corporation of rendering that service.”.

(2) (a) Subsection (1)(a) and (b) is deemed to have come into operation on 1 April 2005 and applies in respect of any asset acquired by a small business corporation under an agreement formally and finally signed by every party to the agreement on or after that date.

(b) Subsection (1)(c), (d) and (e) is deemed to have come into operation on 1 April 2005 and applies in respect of any year of assessment which ends on or after that date.

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, section 19 of Act 28 of 1997, section 27 of Act 53 of 1999 and section 24 of Act 32 of 2004

10. (1) Section 24J of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words in the second proviso to the definition of “yield to maturity” following paragraph (b) of the following words:

“must be taken into account as a reduction of amounts payable by that issuer for purposes of determining that rate of compound interest: Provided further that where the calculated rate of compound interest per accrual period results in a negative rate of interest, the rate of compound interest per accrual period must be treated to be zero.”.

(2) Subsection (1) shall come into operation on 8 June 2005 and shall apply in respect of any instrument issued, acquired or transferred on or after that date.

Amendment of paragraph 23 of Fourth Schedule to Act 58 of 1962, as substituted by section 30 of Act 88 of 1965 and amended by section 53 of Act 85 of 1974, section 51 of Act 94 of 1983, section 41 of Act 121 of 1984, section 27 of Act 65 of 1986 and section 53 of Act 101 of 1990

11. Paragraph 23 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words following item (b) of the following words:

“less, in either case, the total amount of—

(i) any employees’ tax deducted by the taxpayer’s employer from the taxpayer’s remuneration during the relevant period; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6quat.”.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 43 of Act 19 of 2001, section 125 of Act 60 of 2001, section 136 of Act 45 of 2003 and section 67 of Act 32 of 2004

12. Section 44 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (11) for the words in subparagraph (ii) of paragraph (a) preceding the proviso of the following words:

“(ii) where such underpayment was discovered as a result of, during the course of, or following upon, an inspection and that underpayment occurred on a date earlier than two years prior to the date on which such inspection commenced:”.

Amendment of section 47B of Act 91 of 1964, as inserted by section 59 of Act 30 of 2000 and amended by section 40 of Act 12 of 2003

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

“(i) The tax shall be charged at the rate of [R110] R120 on the carriage of each chargeable passenger departing on a flight:”.

(2) Subsection (1) shall come into operation on 1 August 2005, and applies to the carriage of a chargeable passenger on any flight which commences on or after that date and where the ticket of that passenger in respect of that flight was purchased and issued after the date of promulgation of this Act.

Amendment of Schedule No. 1 of Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001, section 53 of Act 30 of 2002, section 41 of Act 12 of 2003, section 155 of Act 45 of 2003 and section 36 of Act 16 of 2004

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

(2) Subject to the provisions of section 58(1) of the Customs and Excise Act, 1964, subsection (1) shall be deemed to have come into operation on 23 February 2005.

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

15. (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56 or 75(15) of that Act during the calendar year ending on 31 December 2004 shall not lapse by virtue of the provisions of section 48(6), 49, 56(3) or 75(16) of that Act.

(2) The amendment of Part 2 and Part 5 of Schedule No. 1 and Schedule No. 6 to the Customs and Excise Act, 1964, made respectively under sections 48 and 75(15) of that Act by Government Notices R. 310, R. 311, R. 312 and R. 313 of 1 April 2005, in respect of the said Part 2 and Part 5 of Schedule No. 1 and Schedule No. 6, shall not lapse by virtue of the provisions of section 48(6) or 75(16) of that Act.

Repeal of item 6 of Schedule 1 to Act 77 of 1968, as inserted by section 10 of Act 118 of 1984 and amended by section 4 of Act 71 of 1986, section 32 of Act 87 of 1988, section 7 of Act 136 of 1992, section 15 of Act 37 of 1996, section 78 of Act 53 of 1999, section 62 of Act 19 of 2001 and section 146 of Act 60 of 2001

16. (1) Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any debit entry made in an account on or after that date.

Repeal of item 13A of Schedule 1 to Act 77 of 1968, as inserted by section 9 of Act 72 of 1970, as substituted by section 18 of Act 114 of 1977 and amended by section 8 of Act 99 of 1981, as substituted by section 13 of Act 92 of 1983 and amended by section 12 of Act 69 of 1989, as substituted by section 8 of Act 136 of 1991 and amended by section 7 of Act 20 of 1994 and section 16 of Act 37 of 1996

17. (1) Item 13A of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any instalment credit agreement executed on or after that date.

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 83 of Act 89 of 1991, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 17 of Act 37 of 1996, section 19 of Act 46 of 1996, section 21 of Act 27 of 1997, section 86 of Act 30 of 1998, section 18 of Act 31 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000, section 42 of Act 5 of 2001, section 147 of Act 60 of 2001, section 56 of Act 30 of 2002, section 113 of Act 74 of 2002, section 163 of Act 45 of 2003 and section 91 of Act 32 of 2004

18. Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the addition to the *Exemptions from the duty under paragraph (1) or (2)* of the following paragraph:

“(j) The issue of marketable securities by any company, within 30 days of its incorporation, which has assumed all the functions of any non-proprietary exchange which prior to 1 July 2005 was exempt from tax in terms of section 10(1)(d) of the Income Tax Act, 1962 (Act No. 58 of 1962);”.

Amendment of section 12 of Act 109 of 1985, as amended by section 8 of Act 78 of 1986, section 14 of Act 49 of 1988, section 16 of Act 69 of 1989, section 5 of Act 75 of 1991, section 16 of Act 134 of 1992 and section 10 of Act 136 of 1992

19. (1) Section 12 of the Regional Services Councils Act, 1985, is hereby amended by the insertion after subsection (1A) of the following subsections:

“(1B) The Commissioner may not act under subsection (1A)(dA)(iv) and the council may not act under an authorisation in terms of subsection (1A)(dB) after the expiration of two years from the date the return from the employer or person concerned was received by the council or if no return was received, from the date on which a return was required to be submitted to the council, unless the levy was not paid due to fraud or misrepresentation.”.

(2) Subsection (1) is deemed to have come into operation on 8 June 2005.

Amendment of section 16 of Act 84 of 1990, as amended by section 23 of Act 134 of 1992, section 11 of Act 136 of 1992 and section 5 of Act 117 of 1993

20. (1) Section 16 of the KwaZulu and Natal Joint Services Act, 1990, is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) The Commissioner may not act under subsection (2)(e)(iv) and the board may not act under an authorisation in terms of subsection (2)(f) after the expiration of two years from the date the return from the employer or person concerned was received by the board or if no return was received, from the date on which a return was required to be submitted to the board, unless the levy was not paid due to fraud or misrepresentation.”.

(2) Subsection (1) is deemed to have come into operation on 8 June 2005.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004 and section 98 of Act 32 of 2004

21. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

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

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

“(u) the services are deemed to be supplied in terms of section 8(5) by a designated entity in respect of any payment made in terms of section 10(1)(f) of the Skills Development Act, 1998 (Act No. 97 of 1998), to that designated entity.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2005.

Amendment of section 39 of Act 89 of 1991, as amended by section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, section 166 of Act 60 of 2001, section 184 of Act 45 of 2003, section 50 of Act 16 of 2004 and section 105 of Act 32 of 2004

22. Section 39 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (5) of the following subsection: 5

“(5) Where any person who is liable for the payment of tax fails to pay any amount of such tax on the date on which in terms of the Customs and Excise Act, liability arises for the payment of the excise duty or environmental levy referred to in section 7(3)(a), that person shall, in addition to such amount of tax, pay— 10

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on that amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.”. 15

Insertion of section 40A in Act 89 of 1991

23. The following section is hereby inserted in the Value-Added Tax Act, 1991, after section 40: 20

“Liability of public authorities and certain public entities for tax and limitation of refunds

40A. (1) This section applies in respect of the supply of goods or services on or before 31 March 2005 by any public authority or public entity listed in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999). 25

(2) Where the Commissioner on or before 31 March 2005 issued an assessment for an amount of tax or additional tax in respect of any supply of goods or services contemplated in subsection (1), to correct a prior incorrect application of the zero per cent rate of tax in terms of section 11(2)(p) in respect of that supply, the Commissioner must, on written application, reduce that assessment to the extent that the amount of tax, additional tax, penalty or interest arose as a result of that correction and was not yet paid on that date: Provided that the reduced assessment will not result in a refund to that public authority or public entity. 30

(3) The Commissioner may not after 31 March 2005 make any assessment to correct a prior incorrect application of the zero per cent rate of tax in terms of section 11(2)(p) in respect of any supply of goods or services contemplated in subsection (1). 35

(4) If a public authority or public entity incorrectly charged tax at the rate referred to in section 7(1) instead of the zero per cent rate of tax in terms of section 11(2)(p) in respect of any supply contemplated in subsection (1), the Commissioner may not refund any such tax or any penalty or interest that arose as a result of the late payment of such tax, paid by that public authority or public entity to the Commissioner.”. 40 45

Amendment of section 4 of Act 9 of 1999, as amended by section 112 of Act 53 of 1999, section 91 of Act 30 of 2000, section 62 of Act 30 of 2002 and section 196 of Act 45 of 2003

24. (1) Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph (b) of the following paragraph: 50

“(b) any employer where section 3(1)(a) or (b) applies and[—

- (i)] during any month, there are reasonable grounds for believing that the total amount of remuneration, as determined in accordance with section 3(4), paid or payable by that employer to all its employees during the following 12 month period will not exceed [R250 000] R500 000 [or such other amount as the Minister may determine by notice in the Gazette; and 55

- (ii) that employer is not required to apply for registration as an employer in terms of paragraph 15(1) of the Fourth Schedule to the Income Tax Act];”.

(2) Subsection (1) shall come into operation on 1 August 2005.

Amendment of section 40 of Act 32 of 2004

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25. Section 40 of the Revenue Laws Amendment Act, 2004, is hereby amended by the addition in subsection (2) to paragraph (b) of the following proviso:

“: Provided that section 64B(3A)(d) shall not apply in respect of any foreign dividend which accrued to the company during any year of assessment of that company commencing before 1 June 2004 and which is exempt from tax in terms of section 9E(7)(d) of the Income Tax Act, 1962.”.

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Tax treatment of share acquired upon conversion of non-proprietary exchange

26. If a person acquires any share—

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- (a) in a company which has assumed all the functions of a non-proprietary exchange that prior to 1 July 2005 was exempt from tax in terms of section 10(1)(d) of the Income Tax Act, 1962 (Act No. 58 of 1962); and
- (b) which was issued by 1 January 2007 by that company to that person in exchange for any right held by that person in that non-proprietary exchange prior to that conversion,

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that share and that right must, for purposes of the Income Tax Act, 1962, be deemed to be one and the same asset.

Taxation proposals on customs and excise duties

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27. The Taxation Proposals containing the customs and excise duties as tabled by the Minister of Finance on 23 February 2005 are hereby amended by the substitution for tariff item 104.30.20 of the following tariff item:

Tariff item	Tariff heading	Description	Present rate of duty 2004/05		Proposed rate of duty 2005/06	
104.30.20	24.02	Cigarettes, of tobacco or of tobacco substitutes	226.40 c/10 cigarettes	226.40 c/10 cigarettes	252.22 c/10 cigarettes	252.22 c/10 cigarettes”.

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Short title and commencement

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28. (1) This Act is called the Taxation Laws Amendment Act, 2005.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2006.

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SCHEDULE 1

RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 2006, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2006

(Section 2)

1. The rates of normal tax referred to in section 2 of this Act in respect of persons (other than companies) are as follows:—

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

Taxable Income	Rates of Tax	
Where the taxable income—		15
Does not exceed R80 000.....	18 per cent of each R1 of the taxable income;	
Exceeds R80 000 but does not exceed R130 000	R14 400 plus 25 per cent of the amount by which the taxable income exceeds R80 000;	
" R130 000 " " " " R180 000	R26 900 plus 30 per cent of the amount by which the taxable income exceeds R130 000;	20
" R180 000 " " " " R230 000	R41 900 plus 35 per cent of the amount by which the taxable income exceeds R180 000;	
" R230 000 " " " " R300 000	R59 400 plus 38 per cent of the amount by which the taxable income exceeds R230 000;	
" R300 000;	R86 000 plus 40 per cent of the amount by which the taxable income exceeds R300 000.	25

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

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

- (a) on each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f), (g) and (h)), 29 cents, or, in the case of such a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 37 cents;
- (b) in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax	
Where the taxable income—		40
Does not exceed R35 000.....	0 per cent of the taxable income;	
Exceeds R35 000 but does not exceed R250 000	10 per cent of the amount by which the taxable income exceeds R35 000;	
Exceeds R250 000.....	R21 500 plus 29 per cent of the amount by which the taxable income exceeds R250 000.	45

- (c) on each rand of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, 34 cents;
- (d) on each rand of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

$$y = \frac{35-175}{x}$$

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

$$y = \frac{45-225}{x}$$

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

- (e) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 29 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (f) on each rand of the taxable income derived by any company from carrying on long-term insurance business in respect of—
 - (i) its individual policyholder fund, 30 cents; and
 - (ii) its company policyholder fund and corporate fund, 29 cents;
- (g) on each rand of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f) and (h)) derived by a company which is not a resident and which carries on a trade through a branch or agency within the Republic, 34 cents;
- (h) on each rand of the taxable income derived by a qualifying company as contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero cents:

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

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

4. For the purposes of paragraph 2, income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.

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

SCHEDULE 2
AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE
ACT, 1964

(Section 14)

Tariff item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included not elsewhere specified or included:		
.10		Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34.7 c/kg	34.7 c/kg
104.10	22.03	Beer made from malt		
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l
.20		Other	3 364.98 c/l of absolute alcohol	3 364.98 c/l of absolute alcohol
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must, other than that of heading no. 20.09		
	22.05	Vermouths and other wine of fresh grapes flavoured with plants or aromatic substances		
.02		Sparkling wine	387.99 c/l	387.99 c/l
.04		Unfortified wine	140.52 c/l	140.52 c/l
.06		Fortified wine	263.14 c/l	263.14 c/l
104.17	22.06	Other fermented beverages, (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
.05		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l
.15		Other fermented beverages, unfortified	168.24 c/l	168.24 c/l
.17		Other fermented beverages, fortified	333.65 c/l	333.65 c/l
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	168.24 c/l	168.24 c/l
.90		Other	333.65 c/l	333.65 c/l

104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength			
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:			5
.10		Wine spirits, manufactured by the distillation of wine	5 042.01 c/l of absolute alcohol	4 945.88 c/l of absolute alcohol	10
.15		Spirits, manufactured by the distillation of any sugar cane product	5 042.01 c/l of absolute alcohol	5 028.11 c/l of absolute alcohol	15
.25		Spirits, manufactured by the distillation of any grain product	5 042.01 c/l of absolute alcohol	4 996.01 c/l of absolute alcohol	20
.29		Other spirits	5 042.01 c/l of absolute alcohol	5 042.01 c/l of absolute alcohol	
.40		Liqueurs and other spirituous beverages	5 042.01 c/l of absolute alcohol	5 042.01 c/l of absolute alcohol	25
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes			30
.10		Cigars, cheroots, and cigarillos, of tobacco or of tobacco substitutes	141 676.55 c/kg net	141 676.55 c/kg net	
.20		Cigarettes, of tobacco or of tobacco substitutes	252.22 c/10 cigarettes	252.22 c/10 cigarettes	35
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:			40
.10		Cigarette tobacco and substitutes thereof	14 946.05 c/kg	14 946.05 c/kg	
.20		Pipe tobacco and substitutes thereof	7 624.01 c/kg net	7 624.01 c/kg net	

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