

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 77))
(The English text of the Bill is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 33—2006]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Transfer Duty Act, 1949, so as to provide for the exemption from duty of municipalities; to provide for the exemption from duty of water service providers; and to delete an obsolete provision in relation to the exemption of public benefit organisations from duty; to amend the Estate Duty Act, 1955, so as to provide for the exemption of property bequeathed to a municipality; to amend the Income Tax Act, 1962, so as to amend, insert and delete certain definitions; to extend the exceptions to the secrecy provisions; to provide for the delegation of powers and performance of duties by the Minister; to provide that the Commissioner may deem a portion of an allowance to be actually expended in respect of subsistence expenses by employees; to further regulate the recoupment of amounts previously allowed as a deduction; to provide for the valuation of shares in a private company; to further regulate the taxation of a resident in relation to foreign companies controlled by the resident; to amend the exemption of foreign states and their institutions and other multinational organisations and their employees; to regulate the exemption of regional electricity distributors, water services providers, mining rehabilitation funds, recreational clubs, interest received or accrued by non-residents, the remuneration of the crew and officers of a ship, scholarships and bursaries, amounts paid by government in respect of assets that are to be destroyed and amounts paid in terms of an official development assistance agreement; to further regulate the deduction of amounts paid to mining rehabilitation funds; to provide for the deduction of advance royalty payments; to provide for increased deductions and allowances in respect of research and development; to further regulate the taxation of small business corporations; to further regulate the deduction of amounts donated to public benefit organisations; to further regulate the deduction of expenditure and allowances and base cost in respect of assets funded by government; to further regulate the double deduction of expenditure for tax purposes; to further regulate the treatment of exchange differences; to further regulate the incurral and accrual of interest; to regulate the tax treatment of mining for oil and gas; to delete obsolete provisions in relation to the long-term insurance industry; to amend the regulation of public benefit organisations, recreational clubs and mining rehabilitation funds; to amend the definition of domestic or foreign financial instrument holding company; to further regulate the treatment of company formation and share for share transactions; to further regulate the disposal by a holding company of a share in a liquidating company; to amend the regulation of a dividend cycle; to insert General Anti-avoidance Rules; to regulate certain administrative provisions of the Act; to regulate the taxation of lump sum benefits in relation to retirement funds; to further regulate the treatment of personal service entities; to exclude public benefit organisations and recreational clubs as provisional taxpayers; to clarify the

definition of the tax threshold; to regulate the treatment of capital gains in relation to deceased estates; to further regulate the capital gains tax treatment of assets disposed of which are used to produce exempt amounts; to provide for the treatment for capital gains tax purposes of assets disposed of for destruction by the government; to further regulate the treatment for capital gains purposes of exchange differences; to provide for the treatment of the disposal of assets by recreational clubs; to provide for the disposal of assets of a deceased estate in terms of a redistribution agreement; to amend the valuation date to cater for recreational clubs and public benefit organisations; to provide for an extension for the submission of valuations based on market value; to provide that a portion of a capital gain may be attributed to a beneficiary of a trust; to amend certain activities which are classified as public benefit activities; to confirm that donations and bequests to public benefit organisations continue to be disregarded; and to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Customs and Excise Act, 1964; to amend and to specify provisions relating to liability for duty of the master, pilot, any other carrier, terminal operator, combination terminal operator, bulk goods terminal operator, road vehicle terminal operator, transit shed operator, container operator and the container depot operator; to amend provisions regarding the amendment of anti-dumping, countervailing and safeguard duties and to provide for other safeguard measures and the imposition of quotas; to amend the references to items of Schedule No. 6 in respect of refunds of distillate fuel, to delete references to Schedule No. 5 and items of that Schedule and to provide for deductions from the dutiable quantity of unmarked illuminating kerosene or unmarked specified aliphatic hydrocarbon solvents; to effect a textual amendment to a refund provision; to delete the word fine from the order in which instalments paid must be utilised; to delete the word fine from the provisions relating to liens on goods and the order in which amounts recovered must be utilised; to deem that certain amendments in respect of the value for excise duty purposes came into operation on 1 July 2001; to amend Schedule No. 4 and to effect certain textual and consequential amendments; to amend the Stamp Duty Act, 1968, to provide for the exemption of municipalities, traditional communities, regional electricity distributors and water service providers from duty; and to amend Schedule 1; to amend the Finance and Financial Adjustments Consolidations Act, 1977, so as to delete section 9 thereof; to amend the Value-Added Tax Act, 1991, so as to amend definitions in respect of designated entities, foreign donor funded projects, municipalities and welfare organisations; to amend and insert certain deeming provisions; to provide for the valuation of the deeming provisions; to provide for zero-rating of fixed property located in a customs controlled area, and other supplies made to an Industrial Development Zone operator, and payments made by public authorities in respect of the Animal Diseases Act, 1984; to further regulate the zero-rating of international donor funding; to provide for certain exemptions; to further regulate the circumstances where input tax deductions may be claimed; to regulate the adjustments to be made by a customs controlled area enterprise and Industrial Development Zone operator in a customs controlled area; to regulate the provisions of bad debts; to further regulate the issuing of additional assessments; to provide for a *de minimus* rule for refunds; to amend Schedule 1; to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Uncertificated Securities Tax Act, 1998, so as to amend the definition of person; to provide for the payment of uncertificated securities tax through a participant or member by the person liable for such payment; and to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Unemployment Insurance Act, 2001, so as to repeal section 3(1)(e) thereof; and to repeal section 14(a)(i) thereof; to amend the Revenue Laws Amendment Act, 2003, so as to bring certain provisions thereof into operation; and to amend an effective date provision; to amend the Taxation Laws Amendment Act, 2005, so as to extend the date for the conversion of exchanges; and to provide for a date of coming into operation of certain provisions; to amend the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, so as to make textual amendments; to further regulate travel allowances in respect of overseas travel; and to provide for the rates of taxation in respect of recreational clubs or public benefit organisations; and to introduce measures relating to 2010 FIFA World Cup South Africa.

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

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005 and section 16 of Act 9 of 2006

1. Section 9 of the Transfer Duty Act, 1949, is hereby amended—

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

“(b) any [rural council, municipal council, town council, village council, town board, local board, village management board, health committee or any district council or the Far West Rand Dolomitic Water Association formed on the 6 July, 1964, or the Rand Water Board, or the council established under section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act No. 84 of 1989), or the Local Authorities Loans Fund Board established by section 4 of the Local Authorities Loans Fund Act, 1984 (Act No. 67 of 1984), or any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985), or any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990)] ‘municipality’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”;

(b) by the substitution in subsection (1) for paragraph (bB) of the following paragraph:

“(bB) any [irrigation board established under Chapter VI, any water board established under Chapter VII or any body established under Chapter VIIA of the Water Act, 1956 (Act No. 54 of 1956), and any regional water services corporation constituted under section 7 of the Water Services Ordinance, 1963 (Ordinance No. 27 of 1963), of Natal] ‘water services provider’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”;

(c) by the substitution in subsection (1)(c) for subparagraph (i) of the following subparagraph:

“(i) a public benefit organisation [**which is exempt from tax**] contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section [10(1)(cN)] 30(3) of [the Income Tax Act, 1962 (Act 58 of 1962)] that Act; or”;

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

“(1A) No duty shall be payable in respect of the registration of any property transferred by any public benefit organisation [**which is exempt from tax in terms of the provisions of section 10(1)(cN)**] contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has

been approved by the Commissioner in terms of section 30(3) of [the **Income Tax Act, 1962**] that Act to any other entity which is controlled by that public benefit organisation [in order to comply with the provisions of the proviso to subsection (3) of section 30 of that Act];”.

Amendment of section 4 of Act 45 of 1955, as amended by section 2 of Act 59 of 1957, section 3 of Act 65 of 1960, section 9 of Act 71 of 1961, section 9 of Act 77 of 1964, section 3 of Act 81 of 1965, section 2 of Act 94 of 1967, section 5 of Act 92 of 1971, section 2 of Act 70 of 1975, section 1 of Act 104 of 1976, section 4 of Act 102 of 1979, section 11 of Act 106 of 1980, section 3 of Act 99 of 1981, section 5 of Act 81 of 1985, section 6 of Act 86 of 1987, section 10 of Act 87 of 1988, section 8 of Act 97 of 1993, section 3 of Act 20 of 1994, section 7 of Act 27 of 1997, section 14 of Act 30 of 1998, section 8 of Act 30 of 2000, section 4 of Act 30 of 2002, section 5 of Act 74 of 2002 and section 6 of Act 31 of 2005

2. Section 4 of the Estate Duty Act, 1955, is hereby amended by the substitution in paragraph (h) for subparagraph (iii) of the following subparagraph:

“(iii) the State or any [local authority within the Republic] ‘municipality’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); or”.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 34 of Act 34 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005 and section 19 of Act 9 of 2006

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

(a) by the insertion in the definition of “**company**” after paragraph (b) of the following paragraph:

“(c) any co-operative; or”;

(b) by the substitution in the definition of “**connected person**” for subparagraph (i) of paragraph (d) of the following subparagraph:

“(i) [its holding company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973)] any other company that would be part of the same group of companies as that company as if the expression ‘at least 70 per cent’ in paragraphs (a) and (b) of the definition of ‘**group of companies**’ in this section were replaced by the expression ‘more than 50 per cent’;”;

(c) by the deletion in paragraph (d) of the definition of “**connected person**” of subparagraphs (ii) and (iii);

(d) by the insertion after the definition of “**controlled foreign company**” of the following definition:

“‘**co-operative**’ means a co-operative as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005);”;

(e) by the substitution in the definition of “**dividend**” for paragraph (c) of the following paragraph:

“(c) in the event of [the partial] any reduction or redemption (other than as contemplated in paragraph (cA) of this definition) of the capital of a company (other than a portfolio, arrangement or scheme

- contemplated in paragraph (e) of the definition of ‘**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— 5
- (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]**”; 10
- (f) by the insertion in the definition of “**dividend**” after paragraph (c) of the following paragraph:
- “(cA) in the event of the reduction of the capital of a company pursuant to that company acquiring its own shares by means of a distribution from any other company, the amount of any reduction of the profits of that company as were available for distribution to shareholders; and”; 15
- (g) by the insertion after the definition of “**government grant**” of the following definition:
- “**‘government scrapping payment’** means any amount, in cash or otherwise, paid to any person by any department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994) (other than a provincial administration), or any such amount paid by any entity listed in the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999), in respect of an asset of that person supplied to that department or that entity solely for purposes of the scrapping, demolition or destruction of those assets for the purposes of public health and safety.”; 20
- (h) by the deletion of the definition of “**local authority**”; 25
- (i) by the substitution for the definition of “**mining operations**” and “**mining**” of the following definition: 30
- “**‘mining operations’** and **‘mining’** include every method or process by which any mineral [(including natural oil)] is won from the soil or from any substance or constituent thereof.”;
- (j) by the insertion after the definition of “**Minister**” of the following definition: 35
- “**‘municipality’** means a municipality which is within a category listed in section 155(1) of the Constitution of the Republic of South Africa, 1996, and which is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).”; 40
- (k) by the substitution in the definition of “**pension fund**” for subparagraph (ii) of paragraph (a) of the following subparagraph: 45
- “(ii) any superannuation, pension, provident or dependants’ fund or pension scheme established for the benefit of the employees of any municipality or of any local authority (as defined in the definition of ‘local authority’ in section 1 prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006, that was established prior to the date that section so came into operation); or”; 50
- (l) by the substitution in paragraph (a)(iii) of the definition of “**pension fund**” for the words preceding item (aa) of the following words: 55
- “any fund contemplated in subparagraph (ii), which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more municipalities or local authorities (as defined in section 1 prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) exercise ownership control as contemplated by that Act, where such fund was established—”; 60

- (m) by the substitution in paragraph (a)(iii) of the definition of “**pension fund**” for item (aa) of the following item:
 “(aa) on or before 14 November 2000, and such employees were employees of a local authority (as defined in section 1 prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006, and that was established prior to the date that section so came into operation) immediately prior to becoming employees of such municipal entity; or”; 5
- (n) by the insertion after the definition of “**Public Private Partnership**” of the following definition: 10
 “**‘regional electricity distributor’** means an electricity distribution services provider established after 30 June 2005 that is—
 (a) a public entity regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 (b) a wholly owned subsidiary or entity of a public entity contemplated in paragraph (a) if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity; or
 (c) a company as contemplated in paragraph (a) of the definition of ‘company’, which is wholly owned by one or more municipalities;”; 15 20
- (o) by the substitution for the definition of “**Republic**” of the following definition:
 “**‘Republic’** means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;”; 25
- (p) by the substitution in the definition of “**retirement annuity fund**” for subparagraph (x) of paragraph (b) of the following subparagraph: 30
 “(x) that a member who discontinues his contributions prematurely shall be entitled to—
 (aa) an annuity (payable from the date on which he would have become entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions **[or to]**; 35
 (bb) be reinstated as a full member under conditions prescribed in the rules of the fund; or
 (cc) the payment of one or more lump sum benefits where that member’s interest in the fund is less than an amount determined by the Minister by notice in the *Gazette* from time to time;”; 40
- (q) by the substitution in paragraph (b) of the definition of “**retirement annuity fund**” for subparagraph (xii) of the following subparagraph: 45
 “(xii) that save—
 (aa) as is contemplated in subparagraph (ii); **[or]**
 (bb) for the transfer of any member’s total interest in any approved retirement annuity fund into another approved retirement annuity fund prior to the member becoming entitled to the payment of an annuity; 50
 (cc) for the benefit contemplated in paragraph (b)(x)(cc); or
 (dd) as is contemplated in Part V of the Policyholder Protection Rules promulgated in terms of section 62 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), 55
 no member’s rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;”;
- (r) by the deletion of the word “or” at the end of paragraph (b) of the definition of “**shareholder**”, the insertion of the word “or” after paragraph (c) of that definition and the addition to that definition of the following paragraph: 60

“(d) in relation to any co-operative, means a member of such co-operative;” and

(s) by the insertion after the definition of “trustee” of the following definition:

“**water services provider**’ means a person who provides water supply services and sanitation services and who is—

(a) a public entity regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(b) a wholly owned subsidiary or entity of that public entity contemplated in paragraph (a) if a operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity;

(c) a company as contemplated in paragraph (a) of the definition of ‘company’, which is wholly owned by one or more municipalities; or

(d) a board or institution which has powers similar to a water board established in terms of the Water Services Act, 1997 (Act No. 108 of 1997), and would have fallen within the ambit of the definition of ‘local authority’ prior to the coming into operation of section 3(1)(h) of the Revenue Laws Amendment Act, 2006;”.

(2) Paragraphs (p) and (q) of subsection (1) shall come into operation on a date to be determined by the President by notice in the *Gazette*.

Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 90 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 76 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986, section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 5 of Act 19 of 2001, section 10 of Act 30 of 2002 and section 15 of Act 45 of 2003

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

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

“(2) Subject to the provisions of subsections [(2A) and] (3) to (7), inclusive, and the provisions of the Fourth Schedule, the rates of tax chargeable in respect of taxable income shall be fixed annually by Parliament, but the rates fixed by Parliament in respect of any year of assessment or financial year or, if the rates so fixed have been varied by the Minister of Finance by way of an amendment made under subsection (3) which is still in force, the rates as so varied, shall be deemed to continue in force until the next such determination or variation of rates and shall be applied for the purposes of calculating the tax payable in respect of any such taxable income received by or accrued to or in favour of any person during the next succeeding year of assessment or financial year, as the case may be, if in the opinion of the Commissioner the calculation and collection of the tax chargeable in respect of such taxable income cannot without risk of loss of revenue be postponed until after the rates for that year have been determined.”; and

(b) by the deletion in section 5 of subsection (2A).

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, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005 and section 21 of Act 9 of 2006

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

- (a) by the substitution in subsection (1)(c)(ii) for the words preceding the proviso of the following words: 5
 “for each day or part of a day in the period during which that recipient is absent from his or her usual place of residence, **[an]** such amount in respect of meals and other incidental costs, or incidental costs only, **[determined by the Minister]** as the Commissioner may determine for a country or region for the relevant year of assessment by way of notice in the *Gazette*, but limited to the amount of the allowance paid or granted to meet those expenses”; and 10
- (b) by the substitution in subsection (4) for paragraph (k) of the following paragraph:
 “(k) For the purposes of paragraph (a), where during any year of assessment any person has— 15
 (i) donated any asset;
 (ii) in the case of a company, transferred in whatever manner or form any asset to any shareholder of that company; or
 (iii) disposed of any asset to a person who is a connected person in relation to that person, 20
 in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph, **[such]** that person shall be deemed to have **[recovered or recouped]** disposed of that asset for an amount equal to the market value of [such] that asset as at the date of [such] that donation, transfer or disposal.” 25

Amendment of section 8B of Act 58 of 1962, as inserted by section 8 of Act 32 of 2004 and amended by section 11 of Act 31 of 2005

6. (1) Section 8B of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (c) of the definition of “**broad-based employee share plan**” of the following paragraph: 30
 “(c) the persons who acquire the equity shares as contemplated in **[subsection (1)] paragraph (a)** are entitled to all dividends and full voting rights in relation to those equity shares; and”; and
- (b) by the substitution in subsection (3) for subparagraphs (ii) and (iii) of paragraph (d) of the definition of “**broad-based employee share plan**” of the following subparagraphs, respectively: 35
 “(ii) a right of any person to acquire those equity shares from the person who acquired the equity shares as contemplated in **[subsection (1)] paragraph (a)** at market value; or 40
 (iii) a restriction in terms of which the person who acquired the equity shares as contemplated in **[subsection (1)] paragraph (a)** may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;”. 45
- (2) Subsection (1) is deemed to have come into operation on 8 November 2005 and applies in respect of any qualifying equity share disposed of on or after that date.

Amendment of section 8C of Act 58 of 1962, as inserted by section 8 of Act 32 of 2004 and amended by section 12 of Act 31 of 2005

7. Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for the definition of “**market value**” of the following definition: 50

- “**‘market value’**, in relation to an equity instrument—
 (a) of a private company contemplated in section 20 of the Companies Act, 1973 (Act No. 61 of 1973), or a company that would be regarded as a private company if it were incorporated under that Act, means an amount determined as its value in terms of a method of valuation— 55
 (i) prescribed in the rules relating to the acquisition and disposal of that equity instrument;

- (ii) which is regarded as a proxy for the market value of that equity instrument for the purposes of those rules; and
- (iii) used consistently to determine both the consideration for the acquisition of that equity instrument and the price of the equity instrument repurchased from the taxpayer after it has vested in that taxpayer; or
- (b) of any other company, means the price which could be obtained upon the sale of that equity instrument between a willing buyer and a willing seller dealing freely at arm's length in an open market and, in the case of a restricted equity instrument, had the restriction to which that equity instrument is subject not existed;".

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, section 25 of Act 30 of 1998, section 15 of Act 53 of 1999, section 7 of Act 59 of 2000, section 12 of Act 74 of 2002, section 20 of Act 45 of 2003, section 11 of Act 32 of 2004 and section 13 of Act 31 of 2005

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

- (a) by the substitution in subsection (1)(e) for subparagraph (i) of the following subparagraph:
 - “(i) any services rendered by such person to or work or labour done by such person for or on behalf of any employer in the national or provincial sphere of government or any **[local authority] municipality** in the Republic or any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the government or **[local authority] municipality** or national or provincial public entity; or”;
- (b) by the deletion in subsection (1) of paragraph (fA); and
- (c) by the substitution in subsection (1)(g) for subparagraph (i) of the following subparagraph:
 - “(i) by the Government, any provincial administration, or by any **[local authority] municipality** in the Republic; or”.

Amendment of section 9D of Act 58 of 1962, as substituted by section 14 of Act 74 of 2002 and amended by section 22 of Act 45 of 2003, section 13 of Act 32 of 2004 and section 14 of Act 31 of 2005

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

- (a) by the deletion in subsection (1) of the definition of **“business establishment”**;
- (b) by the insertion in subsection (1) after the definition of **“controlled foreign company”** of the following definition:
 - “**‘country of residence’**, in relation to a controlled foreign company, means the country where that company has its place of effective management;”;
- (c) by the insertion in subsection (1) after the definition of **“country of residence”** of the following definition:
 - “**‘foreign business establishment’**, in relation to a controlled foreign company, means—
 - (a) a place of business with an office, shop, factory, warehouse or other structure which is used or will continue to be used by that controlled foreign company for a period of not less than one year, whereby the

- business of such company is carried on, and where that place of business—
- (i) is suitably staffed with on-site managerial and operational employees of that controlled foreign company and which management and employees are required to render services on a full time basis for the purposes of conducting the primary operations of that business;
 - (ii) is suitably equipped and has proper facilities for such purposes; and
 - (iii) is located in any country other than the Republic and is used for *bona fide* business purposes (other than the avoidance, postponement or reduction of any liability for payment of any tax, duty or levy imposed by this Act or by any other Act administered by the Commissioner);
- (b) any place outside the Republic where prospecting or exploration operations for natural resources are carried on, or any place outside the Republic where mining or production operations of natural resources are carried on, where that controlled foreign company carries on those prospecting, exploration, mining or production operations;
- (c) a site outside the Republic for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of a comparable magnitude which lasts for a period of not less than six months, where that controlled foreign company carries on those construction or installation activities;
- (d) agricultural land in any country other than the Republic used for *bona fide* farming activities directly carried on by that controlled foreign company; or
- (e) a vessel, vehicle, aircraft or rolling stock used for the purposes of transportation or fishing, or prospecting or exploration for natural resources, or mining or production of natural resources, where that vessel, vehicle, rolling stock or aircraft is used solely outside the Republic for such purposes and is operated directly by that controlled foreign company or by any other company that has the same country of residence as that controlled foreign company and that forms part of the same group of companies as that controlled foreign company;”;
- (d) by the substitution in subsection (1) for paragraph (b) of the definition of “**foreign financial instrument holding company**” of the following paragraph:
- “(b) any [financial] instrument [which constitutes a loan, advance or debt] as defined in section 24J(1) entered into between companies which form part of the same associated group of companies;”;
- (e) by the addition in subsection (1) to the definition of “**foreign financial instrument holding company**” of the following further proviso:
- “: Provided further that in making any such determination, paragraph (i) of the proviso to the definition of “**foreign financial instrument holding company**” in section 41 shall not apply;”;
- (f) by the substitution in subsection (2A) for paragraph (c) of the following paragraph:
- “(c) no deduction shall be allowed in respect of any interest, royalties, rental or income of a similar nature paid or payable or deemed to be paid or payable by that company to any other controlled foreign company (including any similar amount adjusted in terms of section 31) or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties where that controlled foreign company and that other controlled foreign company form part of the same group of companies, [as contemplated in subsection (9)(fA),] unless—
- (i) that resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net

- income of that other controlled foreign company for the relevant foreign tax year; or
- (ii) that interest, rental, royalty, other income, adjusted amount or exchange difference is included in the net income of that other controlled foreign company;”;
- (g) by the substitution in subsection (9)(b) for the words preceding the proviso of the following words:
- “is attributable to any foreign business establishment (including the disposal or deemed disposal of any assets forming part of that foreign business establishment) of that controlled foreign company **[in any country other than the Republic]**”;
- (h) by the substitution in subsection (9)(b)(ii)(bb) for subitems (C) and (D) of the following items, respectively:
- “(C) the products are sold by that controlled foreign company to persons who are not connected persons in relation to that controlled foreign company, for physical delivery to customers’ premises situated within the country of residence of that controlled foreign company; or
- (D) products of the same or similar nature are sold by that controlled foreign company mainly to persons who are not connected persons in relation to that controlled foreign company for physical delivery to customers’ premises situated within the country of residence of that controlled foreign company;”;
- (i) by the substitution in subsection (9)(b)(ii)(cc) for subitems (A) and (B) of the following subitems, respectively:
- “(A) such service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; **[or]**
- (B) such **[services relate]** service relates directly to the sale or marketing of goods of a connected person (in relation to that controlled foreign company) who is a resident and those goods are sold to persons who are not connected persons in relation to that controlled foreign company for physical delivery to customers’ premises situated within the country of residence of that controlled foreign company;”;
- (j) by the addition to subsection (9)(b)(ii)(cc) of the following subitems:
- “(C)such service is rendered mainly in the country of residence of the controlled foreign company for the benefit of customers that have premises situated in that country; or
- (D) to the extent no deduction is allowed of any amount paid by that connected person to that controlled foreign company in respect of that service;”;
- (k) by the substitution in subsection (9)(b)(iii)(aa) for the words preceding subitem (A) of the following words:
- “to the extent that any income and capital gains attributable to those amounts (other than income or capital gains in respect of which any of the provisions contained in paragraphs (e) to (fB) apply) do not in total exceed ten per cent of the income and capital gains of the controlled foreign company attributable to that foreign business establishment other than income or capital gains—”;
- (l) by the deletion in subsection (9)(b)(iii)(cc) of subitem (B);
- (m) by the addition to subsection (9)(fA) of the following proviso:
- “: Provided that any such amount may, at the election of any resident contemplated in subsection (2), be so taken into account”;
- (n) by the substitution in subsection (9) for paragraph (fB) of the following paragraph:
- “(fB) is attributable to the disposal of any asset, as defined in the Eighth Schedule, (other than any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that asset was attributable to any foreign business establishment of any other controlled foreign company, where that company and that other controlled foreign company form part of the same group of companies; or”;

(o) by the substitution for subsection (10) of the following subsection:

“(10) (a) The Commissioner may issue a ruling that—

- (i) deems a place of business of a controlled foreign company as fulfilling the requirements of paragraph (a)(i) and (ii) of that definition by taking into account the utilisation of employees, equipment and facilities of any company that has the same country of residence as that controlled foreign company where that other company forms part of the same group of companies as the controlled foreign company; 5
- (ii) disregards the application of subsection (9)(b)(ii) in respect of the sale of goods or performance of services by a controlled foreign company where the foreign business establishment of that controlled foreign company situated in that company’s country of residence mainly serves as a central location for the sale or performance of identical or similar goods or services in at least two countries that are contiguous to the country of residence of that company; 10
- (iii) disregards the application of subsection (9)(b)(ii) to royalties received by or accrued to a controlled foreign company where that company directly and regularly creates, develops, substantially upgrades or adds value to (or provides substantial support services in respect of) intangibles giving rise to those royalties; 15
- (iv) disregards the application of subsection (9)(b)(ii) or (iii) where—
 - (aa) the Commissioner is satisfied that the income from the sale of goods or performance of services will be subject to tax on income by any sphere of government of countries other than the Republic; and 25
 - (bb) the amount of tax on income contemplated in item (aa) will equal at least two-thirds of the normal tax that would otherwise arise in connection with that income if subsection (9)(b)(ii) or (iii), as the case may be, were to apply in respect of that income after—
 - (A) taking into account any applicable agreements for the prevention of double taxation, and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and 30
 - (B) after disregarding any assessed losses; and 35
- (v) disregards the business activities of a bank or financier, insurer or broker of a controlled foreign company arising in any country other than that company’s country of residence where— 40
 - (aa) that business is conducted through a permanent establishment in that other country;
 - (bb) the income from that business is subject to tax on income by that other country by virtue of that permanent establishment; and 45
 - (cc) the rate of tax imposed by that other country will at least equal the rate of tax that would otherwise be imposed by the country of residence had the income arisen within that country—
 - (A) taking into account any applicable agreements for the prevention of double taxation, and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and 50
 - (B) after disregarding any assessed losses: 55

Provided that the Commissioner is satisfied that application of subparagraphs (i), (ii), (iii), (iv) or (v), as the case may be, will not lead to an unacceptable erosion of the tax base.

(b) Any ruling issued in terms of paragraph (a) will be subject to the same procedures, terms and conditions as a “binding private ruling” as contemplated in Part IA of Chapter III without regard to section 76G(1)(a)(ii).” 60

(2) Subsection (1) is deemed to have come into operation on 2 November 2006 and shall apply in respect of any year of assessment ending on or after that date.

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, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005 and section 23 of Act 9 of 2006

10. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) the receipts and accruals of the Government[, or any provincial administration **[or of any other state]**”;
- (b) by the substitution for paragraph (b) of the following paragraph:
- “(b) the receipts and accruals of **[local authorities]** municipalities”;
- (c) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
- “(bA) the receipts and accruals of—
- (i) any sphere of government of any country other than the Republic;
- (ii) any institution or body established by a foreign government to the extent the institution or body has been appointed by that government to administer its responsibilities and functions in terms of an official development assistance agreement which is binding in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996, and that agreement provides that those receipts and accruals of that institution or body must be exempt; or
- (iii) any multinational organisation providing foreign donor funding in terms of an official development assistance agreement that is binding in terms of section 231(3) of the Constitution of the Republic of South Africa Act, 1996, to the extent—
- (aa) the receipts and accruals are derived pursuant to the organisation supplying goods or rendering services in relation to projects that are approved by the Minister after consultation with the Minister of Foreign Affairs;
- (bb) that agreement provides that those receipts and accruals of that organisation must be exempt; and
- (cc) the Minister announces that those receipts and accruals are exempt by notice in the *Gazette*.”;
- (d) by the insertion in subsection (1) after subparagraph (v) of paragraph (c) of the following subparagraph:
- “(vi) any salary and emoluments payable to any person that is a subject of a foreign state and who is not a resident to the extent that that salary or those emoluments are paid by—
- (aa) an institution or body contemplated in subsection (1)(bA)(ii) in respect of any agreement contemplated therein; or
- (bb) an organisation contemplated in subsection (1)(bA)(iii) in respect of services rendered in relation to a project contemplated therein.”;

- (e) by the substitution in subsection (1) for the words preceding item (aa) of subparagraph (i) of paragraph (cA) of the following words:
 “any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or under any law repealed by that Act 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, and any water services provider, and any Black tribal authority, community authority, Black regional authority or Black territorial authority contemplated in section 2 of the Black Authorities Act, 1951 (Act No. 68 of 1951)) established by or under any law and which, in the furtherance of its sole or principal object—”;
- (f) by the deletion in subsection (1) of paragraph (cH);
- (g) by the substitution in subsection (1) for subparagraph (v) of paragraph (cM) of the following subparagraph:
 “(v) the business directly connected with the sole or principal object was previously carried on by a **[municipal council] municipality** and the control of the company is exercised by such **[municipal council] municipality**; and”;
- (h) by the substitution in subsection (1) for item (bb) of subparagraph (vi) of paragraph (cM) of the following item:
 “(bb) a **[local authority] municipality** to utilise such assets for the same objects as the aforesaid company.”;
- (i) by the substitution in subsection (1) for paragraph (b) of the proviso to subparagraph (vi) of paragraph (cM) of the following paragraph:
 “(b) where the Commissioner has withdrawn his approval of such company, it shall, within two months from the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any company which is exempt from tax under this paragraph or to a **[local authority] municipality** to utilise such assets for the same objects as the aforesaid company.”;
- (j) by the insertion in subsection (1) after paragraph (cN) of the following paragraphs:
 “(cO) the receipts and accruals of any recreational club approved by the Commissioner in terms of section 30A, to the extent that the receipts and accruals are derived—
 (i) in the form of membership fees or subscriptions paid by its members;
 (ii) from any business undertaking or trading activity that—
 (aa) is integral and directly related to the provision of social and recreational amenities or facilities for the members of that club;
 (bb) is carried out on a basis substantially the whole of which is directed towards the recovery of cost; and
 (cc) does not result in unfair competition in relation to taxable entities;
 (iii) from any fundraising activities of that club, which are of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; and
 (iv) from any other source and do not in total exceed the greater of—
 (aa) five per cent of the total membership fees and subscriptions due and payable by its members during the relevant year of assessment; or
 (bb) R50 000;
 (cP) the receipts and accruals of a company or trust contemplated in section 37A.”;
- (k) by the deletion in subsection (1) of item (aa) of subparagraph (iv) of paragraph (d);
- (l) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (h) of the following words:
 “(h) interest as defined in section 24J(1) or deemed interest as contemplated in section 8E(2), which is received or accrued during

- any year of assessment by or to any person who is not a resident, unless that person—”;
- (m) by the substitution in subsection (1) for item (bb) of subparagraph (i) of paragraph (o) of the following item:
- “*(bb)* in the prospecting, exploration or mining (including surveys and other **[exploratory]** work of a similar nature) for, **[or the mining of,]** or production 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)]** Republic, 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),”;
- (n) by the substitution in paragraph (p) of subsection (1) for the following paragraph:
- “*(p)* any amount received by or accrued to any person who is not a resident, for services rendered or work or labour done by him outside the Republic for or on behalf of any employer in the national or provincial sphere of Government or any **[local authority] municipality** in the Republic or any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, if such amount is chargeable with income tax in the country in which he is ordinarily resident and the income tax so chargeable is borne by himself and is not paid on his behalf by the Government, the **[local authority] municipality** concerned or such public entity;”;
- (o) by the substitution in subsection (1) for paragraph (q) of the following paragraph:
- “*(q)* any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognised educational or research institution: Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an employee (as defined in the said paragraph) or to a relative of such employee **[in circumstances indicating that the scholarship or bursary concerned would not have been granted had that employee not been an employee of that employer]**, the exemption under this paragraph shall not apply—
- (i) **[if any remuneration to which the employee was entitled or might in the future have become entitled was in any manner whatsoever reduced or forfeited as a result of the grant of such scholarship or bursary]** in the case of a scholarship or bursary granted to so enable or assist any such employee, unless the employee agrees to reimburse the employer for any scholarship or bursary granted to that employee if that employee fails to complete his or her studies for reasons other than death, ill-health or injury;
- (ii) in the case of a scholarship or bursary granted to enable or assist any such relative of an employee so to study—
- (aa) if the remuneration derived by the employee during the year of assessment exceeded R60 000; and
- [(iii)]** *(bb)* to so much of any scholarship or bursary contemplated in **[paragraph (ii)]** this subparagraph as in the case of any such relative exceeds **[R2 000]** R3 000 during the year of assessment;”;
- (p) by the insertion in subsection (1) after subparagraph (vi) of paragraph (t) of the following subparagraphs:
- “*(vii)* of any traditional council as contemplated in the Communal Land Rights Act, 2004 (Act No. 11 of 2004): Provided that the Minister may by notice in the *Gazette* determine that those receipts and accruals shall not be exempt with effect from any year of assessment commencing on or after a date to be determined by the Minister in such notice;

- (viii) of any regional electricity distributor that is wholly owned by any person that is exempt from normal tax during any year of assessment commencing before 1 January 2014, or before a later date that may be determined by the Minister by notice in the *Gazette*;
- (ix) of any water services provider;”;
- (q) by the insertion in subsection (1) of the following proviso to paragraph (t):
“: Provided that all entities contemplated in this paragraph comply with such reporting requirements as the Commissioner may determine;”;
- (r) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (y) of the following words:
“any government grant or government scrapping payment received [by] or accrued [**to or in favour of a person**] in terms of any programme or scheme which has been approved in terms of the national annual budget process and has been identified by the Minister by notice in the *Gazette* with effect from a date specified by the Minister in that notice (including any date that precedes the date of such notice) for purposes of this paragraph, having regard to—”;
- (s) by the substitution in subsection (1) for subparagraph (iii) of paragraph (y) of the following subparagraph:
“(iii) the financial implications for government should government grants or government scrapping payments in terms of that programme or scheme be exempt from tax; and”;
- (t) by the substitution in subsection (1) for paragraph (iv) of paragraph (y) of the following subparagraph:
“(iv) whether the tax implications were taken into account in determining the appropriation or payment in respect of that programme or scheme;”;
- (u) by the insertion in subsection (1) after paragraph (y) of the following paragraph:
“(yA) any amount received by or accrued to any person in respect of goods or services provided to beneficiaries in terms of an official development assistance agreement that is binding in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996, to the extent—
(aa) that amount is received or accrued in relation to projects that are approved by the Minister after consultation with the Minister of Foreign Affairs;
(bb) that agreement provides that those receipts and accruals of that person must be exempt; and
(cc) the Minister announces that those receipts and accruals are exempt by notice in the *Gazette*.”.

(2) Paragraph (f) of subsection (1) and paragraph (j) of subsection (1), to the extent that it inserts paragraph (cP) into subsection (1), are deemed to have come into operation on 2 November 2006 and apply in respect of any year of assessment commencing on or after that date.

(3) Paragraph (j) of subsection (1), to the extent that it inserts paragraph (cO) into subsection (1), and paragraph (l) of subsection (1) shall come into operation on 1 April 2007 and shall apply in respect of any year of assessment commencing 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, 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, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005 and section 18 of Act 31 of 2005 5

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

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

“(gB) expenditure (other than expenditure which has qualified in whole or in 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 grant of any patent or the restoration of any patent, or the extension of the term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the registration of any design, or the extension of the registration period of any design under the Designs Act, 1993 (Act No. 195 of 1993), or the renewal of the registration of any trade mark under the Trade Marks Act, 1993 (Act No. 194 of 1993), or under similar laws of any other country, 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 no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004**];”;

(b) by the substitution for paragraph (hA) of the following paragraph:

“(hA) so much of any amount (other than an amount in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) paid in cash during any year of assessment commencing before 2 November 2006 by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust referred to in section 10(1)(cH) to be used for the purposes contemplated in that section as does not exceed an amount determined in accordance with the formula:

$$\frac{A-B+C}{D} \quad 35$$

in which formula in respect of each mine—

“A” represents the amount determined by a person designated by the Minister of Minerals and Energy of the estimated costs to be incurred at the time that or after operations on the mine or part of the mine are discontinued in order to discharge the obligations imposed in terms of any law which regulates mining operations (other than costs which were required in terms of any law to be incurred on an ongoing basis during the life of that mine or part of that mine);

“B” means the market value of the assets held by the company, society, association or trust in respect of that mine on the date of the determination of the estimated costs in symbol “A”;

“C” means the amount paid in cash by that taxpayer to such company, such association company, society or trust at any time before the date contemplated in symbol “B” which has not been allowed as a deduction in terms of this paragraph in any year of assessment; and

“D” represents the estimated remaining life of that mine in number of years as determined by a person contemplated in symbol “A”:

Provided that so much of the amount so paid in cash by that taxpayer as exceeds the deduction allowable in terms of this paragraph shall, for the purposes of this paragraph, be deemed to be an amount paid by the taxpayer in cash to that company, society,

association or trust in the immediately succeeding year of assessment to be used for the purpose contemplated in sections 10(1)(cH) or 37A;” and

(c) by the insertion after subsection (hA) of the following subsection:

“(hB) an allowance in respect of expenditure actually incurred and paid in the production of income to discharge all consideration, royalties or compensation otherwise payable to a community or natural person in respect of any existing consideration, contractual royalty, future consideration or compensation that accrued to that community or natural person as contemplated in Item 11 of Schedule II of the Petroleum Resources Development Act, 2002 (Act No. 28 of 2002): Provided that for any year of assessment, the allowance shall not exceed an amount equal to the expenditure incurred and paid divided by the number of years for which all consideration, royalties or compensation otherwise payable has been discharged;”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 2 November 2006 and applies in respect of expenditure incurred on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 2 November 2006 and shall apply to any payment in respect of any year of assessment commencing on or after that date.

(4) Paragraph (c) of subsection (1) is deemed to have come into operation on 31 December 2006 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of Section 11B of Act 58 of 1962, as inserted by section 29 of Act 45 of 2003 and amended by section 10 of Act 16 of 2004 and section 17 of Act 32 of 2004

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

(a) by the deletion in subsection (2) of paragraph (b); and

(b) by the insertion after subsection (6) of the following subsection:

“(7) Notwithstanding any other provision of this section, no deduction shall be allowed under this section in respect of any expenditure contemplated in subsection (2), or any cost contemplated in subsection (3), if—
 (a) the expenditure was incurred on or after 2 November 2006; or
 (b) the building, machinery, plant, implement, utensil and article was brought into use for the first time on or after that date.”.

Insertion of section 11D in Act 58 of 1962

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

“Deductions in respect of scientific or technological research and development

11D. (1) There shall be allowed as a deduction during any year of assessment an amount equal to 150 per cent of so much of any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (2)) directly in respect of activities undertaken in the Republic for purposes of—

(a) the discovery of novel, practical and non obvious information of a scientific or technological nature; or

(b) the devising, developing, or creating of any invention as defined in section 1 of the Patents Act, 1978 (Act No. 57 of 1978), any design as defined in section 1 of the Designs Act, 1993 (Act No. 195 of 1993), or any computer program as defined in section 1 of the Copyright Act, 1978 (Act No. 98 of 1978), or other similar property of a scientific or technological nature.

(2) There shall be allowed as a deduction by a taxpayer in respect of any building, machinery, plant, implement, utensil and article brought into use by that taxpayer for purposes contemplated in subsection (1), an allowance equal to 50 per cent of the cost to the taxpayer to acquire that building,

machinery, plant, implement, utensil and article in the year of assessment that it is brought into use for the first time by that taxpayer and 30 per cent in the first succeeding year of assessment and 20 per cent in the second succeeding year of assessment: Provided that where any building was used partly for those purposes and partly for other purposes in the same year of assessment, the allowance for that year of assessment shall be limited to an amount which bears to the full amount of the allowance for that year, the same ratio as the use of that building for those purposes bears to the total use of that building in that year of assessment. 5

(3) For the purposes of this section, the cost to the taxpayer of any building, machinery, implement, utensil and article shall be deemed to be the lesser of the actual cost to the taxpayer in respect of the acquisition thereof or the cost which a person would, if he or she had acquired that building, machinery, plant, implement, utensil and article under a cash transaction concluded at arms length on the date on which the transaction for the acquisition thereof was in fact included, have incurred in respect of the direct cost of such acquisition, including the direct cost of the installation or erection thereof or, where the building, machinery, plant, implement, utensil or article has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment. 10 15 20

(4) Notwithstanding any other provision of this section, any building or any part thereof shall be deemed not to have been used for purposes contemplated in subsection (2) unless such building or part is regularly used for those purposes and is specifically equipped for such use. 25

(5) Notwithstanding any other provision of this section, no deduction shall be allowed in terms of subsections (1) or (2) in respect of expenditure or costs relating to— 30

- (a) exploration or prospecting;
- (b) management or internal business processes;
- (c) trade marks;
- (d) the social sciences or humanities; or
- (e) market research, sales or marketing promotion. 35

(6) The allowance contemplated in this section shall apply in lieu of any other deduction or allowance granted under any other provision of this Act.

(7) Where any amount (other than a government grant) is received by, or accrues to, a taxpayer to fund expenditure that is otherwise eligible for deduction under subsection (1), the deduction for that expenditure shall be limited to 100 per cent in lieu of 150 per cent to the extent of that amount. 40

(8) Where any government grant is received by, or accrues to, a taxpayer to fund expenditure that is otherwise eligible for a deduction under subsection (1), the deduction for that expenditure shall be limited to 100 per cent in lieu of 150 per cent to the extent of twice that amount (except to the extent that expenditure is disallowed in terms of section 23(n)). 45

(9) Where a taxpayer during any year of assessment—

- (a) recovers or recoups any expenditure in respect of which a deduction was allowed in terms of subsection (1) during that year or any previous year, such deduction shall be included in the income of that taxpayer; 50
- (b) ceases to use any building or part thereof for purposes contemplated in subsection (1), there shall be included in the income of the taxpayer all deductions allowed in terms of subsection (2) in respect of that building or part in any year of assessment, limited to 100 per cent of the cost to the taxpayer of that building or part, less 10 per cent for each year that the building or part was regularly used for such purposes. 55

(10) The provisions of section 8(4)(a) and 11(o) shall not apply to so much of the amount of any allowance contemplated in subsection (2) as has been included in the taxpayer's income under the provisions of subsection (9), whether in the current or any previous year of assessment.

(11) In respect of each year of assessment during which any taxpayer is eligible for any deduction contemplated in subsections (1) or (2), or would be so eligible were it not for the provisions of subsection (8), that taxpayer must submit to the Minister of Science and Technology such information as that Minister may require in such form and manner (including electronically) and at such place as that Minister may from time to time prescribe.

(12) The Minister of Science and Technology shall annually and in anonymous form submit to Parliament a report advising Parliament of the direct benefits of the activities contemplated in subsection (1) in terms of economic growth, employment and other broader government objectives and the aggregate expenditure in respect of such activities.

(13) Other than as may be required by subsection (12), the Minister of Science and Technology and every person employed or engaged by him or her in carrying out the provisions of this section shall preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the Commissioner or the taxpayer concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession of that Minister or person except in the performance of his or her duties as required by the laws of the Republic or by order of a competent court.

(14) Every person employed or engaged as contemplated in subsection (13) shall, before acting under this section, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed as contemplated in section 4(2)(a).

(15) The provisions of subsection (13) shall not apply in respect of information relating to any person, where that person has consented in writing that such information may be published or made known to any other person.

(16) Any person who contravenes the provisions of subsection (13) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(17) Any person who contravenes the provisions of subsection (11) or (14) shall be guilty of an offence and liable on conviction to a fine of R50 for each day that he or she is in contravention or to imprisonment without the option of a fine for a period not exceeding 12 months."

(2) Subsection (1) is deemed to have come into operation on 2 November 2006 and shall apply in respect of expenditure actually incurred, or buildings, machinery, plant, implements, utensils and articles of a capital nature brought into use for the first time on or after that date.

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, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005 and section 24 of Act 9 of 2006

14. Section 12E of the Income Tax Act, 1962, is hereby amended—

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

“**‘small business corporation’** means any close corporation, co-operative or company registered as a private company in terms of the Companies Act, 1973 (Act No. 61 of 1973), all the [entire shareholding] shareholders of which [**is**] are at all times during the year of assessment [**held by shareholders or members that are**] natural persons, where—”;

(b) by the insertion in subsection (4) after item (cc) of subparagraph (ii) of paragraph (a) of the following subitems:

- “(dd) a social or consumer co-operative or a co-operative burial society as defined in section 1 of the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other similar co-operative if all of the income derived from the trade of that co-operative during any year of assessment is solely derived from its members; or 5
- (ee) any friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);”;
- (c) by the substitution in subsection (4) for subparagraph (i) of paragraph (c) of the following subparagraph:
- “(i) any income in the form of dividends, royalties, rental derived in respect of immovable property, annuities or income of a similar nature;”;
- and
- (d) by the substitution in subsection (4) for subparagraph (ii) of paragraph (d) of the following subparagraph:
- “(ii) that company or close corporation does not throughout the year of assessment employ **[at least four]** three or more 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.” 10 15 20

Amendment of section 15 of Act 58 of 1962, as amended by section 20 of Act 55 of 1966, section 18 of Act 129 of 1991, section 16 of Act 141 of 1992 and section 24 of Act 31 of 2005

15. Section 15 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the following paragraph: 25

- “(b) any expenditure incurred by the taxpayer during the year of assessment on prospecting operations (including surveys, boreholes, trenches, pits and other prospecting **[exploratory]** work preliminary to the establishment of a mine) in respect of any area within the Republic together with any other expenditure which is incidental to such operations:” 30

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970 and substituted by section 16 of Act 96 of 1981 and amended by section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1988, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991, section 11 of Act 36 of 1996 and substituted by section 24 of Act 30 of 2000 and amended by section 20 of Act 30 of 2002, section 34 of Act 45 of 2003 and section 26 of Act 31 of 2005 35

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

- (a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the following subparagraph: 40
- “(i) public benefit organisation contemplated in paragraph (a)(i) of the definition of ‘**public benefit organisation**’ in section 30(1) approved by the Commissioner under section 30; or”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 45
- “(b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of ‘**public benefit organisation**’ in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a); or”;
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 50
- “(c) the Government, any provincial administration or **[local authority]** municipality as contemplated in section 10(1)(a) or (b) to be used for the purpose of any activity contemplated in Part II of the Ninth Schedule.”; 55

- (d) by the substitution for subsection (1A) of the following subsection:
 “(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the government, provincial administration or **[local authority] municipality** carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the government, provincial administration or **[local authority] municipality** shall be allowed as a deduction under subsection (1).”;
- (e) by the substitution in subsection (1C) for the words preceding paragraph (a) of the following words:
 “The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4(d) of Part II of the Ninth Schedule, must expressly provide that the organisation—”;
- (f) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body or the government, provincial administration or **[local authority] municipality** concerned, on which the following details are given, namely—”;
- (g) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 “(c) the name of the public benefit organisation, institution, board or body or the government, provincial administration or **[local authority] municipality** which received the donation, together with an address to which enquiries may be directed in connection therewith;”;
- (h) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
 “(f) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board or body concerned or, in the case of the government, provincial administration or **[local authority] municipality** in carrying on the relevant public benefit activity.”;
- (i) by the substitution in subsection (2A) for the words preceding paragraph (a) of the following words:
 “A public benefit organisation, institution, board, body, government, provincial administration or **[local authority] municipality** may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—”;
- (j) by the substitution in subsection (2A) for paragraph (c) of the following paragraph:
 “(c) in the case of the government, provincial administration or **[local authority] municipality**, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.”; and
- (k) by the substitution for subsection (2C) of the following subsection:
 “(2C) The Accounting Authority contemplated in the Public Finance Management Act, **[1997] 1999**, (Act No. 1 of 1999) for the government, provincial administration or **[local authority] municipality** which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).”.

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of

Act 30 of 2000, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004 and section 28 of Act 31 of 2005

17. Section 23 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of paragraph (j);
 (b) by the substitution in paragraph (k) for the words after subparagraph (iii) of the following words:

“other than any expense which constitutes an amount paid or payable to any employee of such labour broker, company or trust for services rendered by such employee, which is or will be taken into account in the determination of the taxable income of such employee and, in the case of such personal service company or personal service trust, any expense, deduction or contribution contemplated in paragraphs (c), (i) and (l) of section 11, expenses in respect of premises, finance charges, insurance, repairs and fuel and maintenance in respect of assets, if such premises or assets are used wholly and exclusively for purposes of trade;”;

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

“(n) any deduction or allowance in respect of any asset or expenditure to the extent that **[an]** amount—

(i) is granted or paid to the taxpayer and is exempt from tax in terms of section 10(1)(y) or (yA) [is granted to the taxpayer by the Government, which—

(i) **is not subject to tax;**] and

(ii) is so granted or paid for purposes of the acquisition of that asset or funding of that expenditure:

Provided that the provisions of this paragraph shall not apply if the grant or payment is in respect of programmes or schemes that the Minister has identified by notice in the *Gazette* for purposes of this paragraph.”.

Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991, amended by section 16 of Act 21 of 1994, section 29 of Act 30 of 2000 and section 39 of Act 45 of 2003

18. Section 23B of the Income Tax Act, 1962, is hereby amended—

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

“(1) Where, but for the provisions of this subsection, an amount—

- (a) qualifies or has qualified for a deduction or an allowance; or
 (b) is otherwise taken into account in determining the taxable income of any person,

under more than one provision of this Act, **[such]** that amount or any portion thereof, shall not be allowed or taken into account more than once **[as a deduction or allowance]** in the determination of the taxable income of any person.”;

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

“(3) No deduction shall be allowed under section 11(a) in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that—

- (a) such other provision may impose any limitation on the amount of such deduction or allowance; or

(b) that deduction or allowance in terms of that other provision may be granted in a different year of assessment.”.

Amendment of section 24I of Act 58 of 1962 as inserted by section 21 of Act 113 of 1993

19. (1) Section 24I of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (11) of the following subsection:

“(11A) An amount shall not be included in or deducted from the income of a resident in terms of this section in respect of any exchange difference arising from any forward exchange contract or foreign currency option contract entered into by that resident to hedge the acquisition of the equity shares of a company by that resident, or by any other resident forming part of the same group of companies as that resident, to the extent—

- (a) that resident, or that other resident, as the case may be, acquires or is entitled to acquire, no less than 20 per cent of the equity shares of that company;
- (b) that company will, after that acquisition, be a controlled foreign company (as defined in section 9D(1)) in relation to that resident or that other resident, as the case may be; and
- (c) (i) in the case of an acquisition by that resident, that amount is not included in the income statement of that resident utilised for financial reporting purposes pursuant to International Financial Reporting Standards, or
 - (ii) in the case of an acquisition by another resident forming part of the same group of companies as that resident, that amount is not included in the income statement of that resident utilised for financial reporting purposes pursuant to International Financial Reporting Standards if that income statement forms part of the group financial statements in terms of which that resident is viewed as part of a group for purposes of those Standards.”.

(2) Subsection (1) shall come into operation on 31 December 2006 and shall apply in respect of an acquisition of equity shares occurring during any year of assessment ending 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, section 24 of Act 32 of 2004 and section 10 of Act 9 of 2005

20. Section 24J of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
 - “Where any **[interest]** amount actually—”;
- (b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
 - “(a) paid by any person in terms of an instrument is to be taken into account in the determination of any accrual amount in relation to **[such an]** that instrument or any other amount determined in accordance with an alternative method in relation to **[such]** that instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (2), no account shall for the purposes of section 11 be taken of any such **[interest]** amount so actually paid, save by way of the operation of such subsection;”;
 - and
- (c) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
 - “(b) received by any person in terms of an income instrument is to be taken into account in the determination of any accrual amount in relation to **[such]** that income instrument or any other amount determined in accordance with an alternative method in relation to **[such]** that income instrument which accrual amount or other amount is to be dealt with in terms of the provisions of subsection (3), no account shall for the purposes of the definition of ‘**gross income**’ in section 1 be taken of any such **[interest]** amount so actually received, save by way of the operation of such subsection.”.

Insertion of section 26B in Act 58 of 1962

21. The following section is hereby inserted in the Income Tax Act, 1962, after section 26A:

“Taxation of oil and gas companies

26B. (1) The taxable income of any oil and gas company, as defined in the Tenth Schedule, shall be determined in accordance with the provisions of this Act but subject to the provisions of that Schedule.

(2) The tax imposed on the net amount of any dividend declared by an oil and gas company, as defined in the Tenth Schedule, as derived from profits attributable to its oil and gas income (as defined in that Schedule) shall be determined in accordance with the provisions of this Act but subject to the provisions of the Tenth Schedule.

(3) Part IIA of Chapter III of this Act applies to the Tenth Schedule notwithstanding any provision to the contrary contained in subsections (1) and (2).”

Repeal of section 29 of Act 58 of 1962

22. Section 29 of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002 and section 16 of Act 16 of 2004

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

- (a) by the deletion of the proviso to subsection (3);
- (b) by the deletion of subsection (15); and
- (c) by the deletion of subsection (16).

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 28 of Act 32 of 2004 and section 36 of Act 31 of 2005

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

- (a) by the substitution in subsection (1) for paragraph (a) of the definition of “**public benefit organisation**” of the following paragraph:

“(a) which is—

- (i) a company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons that has been incorporated, formed or established in the Republic; or
- (ii) any agency or branch within the Republic of any company, association or trust incorporated, formed or established in terms of the laws of any country other than the Republic that is exempt from tax on income in that other country;”;

- (b) by the substitution in subsection (1) for the words preceding subparagraph (i) in paragraph (b) of the definition of “**public benefit organisation**” of the following words:

“of which the sole or principal object is carrying on one or more public benefit activities [(including any undertakings or activities which are not prohibited under subsection (3)(b)(iv))], where—”;

- (c) by the deletion in subsection (1) of subparagraphs (ii) and (iii) of paragraph (c) of the definition of “**public benefit organisation**”;

- (d) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph:

“(ii) prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established[, or to invest such funds—

(aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(bb) in any listed financial instrument of a company contemplated in paragraph (a) of the definition of “listed company”; or

(cc) in such other prudent investments in financial instruments and assets as the Commissioner may determine after

consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations]”;

- (e) by the substitution in subsection (3)(b)(iii) for the words preceding item (aa) of the following words: 5
“in the case of a public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in subsection (1), is required on dissolution to transfer its assets to—”;
- (f) by the insertion in subsection (3) after subparagraph (iii) of paragraph (b) of the following subparagraph: 10
“(iiiA) in the case of an agency or branch of a public benefit organisation contemplated in paragraph (a)(ii) of the definition of ‘public benefit organisation’ in subsection (1), is required on termination of its activities in the Republic to transfer the assets of such agency or branch to—
(aa) any public benefit organisation contemplated in paragraph (a)(i) of the definition of ‘public benefit organisation’ in subsection (1) which has been approved in terms of this section;
(bb) any institution, board, body, department or administration 15
contemplated in subsection (3)(b)(iii)(bb) or (cc); or
(cc) any person if the branch paid for the asset out of funds derived from a source outside the Republic;”;
- (g) by the deletion of subsection (3)(g);
- (h) by the insertion after subsection (3B) of the following subsection: 25
“(3C) Notwithstanding any other provision of this section, the Director of Nonprofit Organisations designated in terms of section 8 of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), may, in respect of any organisation that has been convicted of an offence under that Act, request the Commissioner to withdraw the approval of that 30
organisation in terms of subsection (5) and the Commissioner may pursuant to that request withdraw such approval.”;
- (i) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 35
“Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply[—].”;
- (j) by the deletion in subsection (4) of paragraphs (a) and (b);
- (k) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words: 40
“Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within [three] six months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other organisation which is—”; and 45
- (l) by the substitution for subsection (7) of the following subsection: 50
“(7) [Where any such] If the organisation fails [so] to transfer, or [so] to take reasonable steps to transfer, its [remaining] assets[, the accumulated net revenue which has not been distributed in terms of this section shall] as contemplated in subsection (6) an amount equal to 55
the market value of those assets which have not been transferred, less an amount equal to the bona fide liabilities of the organisation, must for [the] purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment [referred to in subsection (5)] in which approval was withdrawn.”.
- (2) Subsection (1) is deemed to have come into operation on 2 November 2006 and applies in respect of any year of assessment commencing on or after that date.

Insertion of section 30A in Act 58 of 1962

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

“Recreational clubs

30A. (1) For purposes of this Act, “recreational club“ means any company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for the members of that company, society or other association. 5

(2) The Commissioner must approve a recreational club for the purposes of section 10(1)(cO), if—

- (a) that club has submitted to the Commissioner a copy of the constitution or other written instrument in terms of which it is established and which provides that— 10
- (i) its activities must be carried on in a non-profit manner;
 - (ii) it is prohibited from directly or indirectly distributing any surplus funds to any person, other than in terms of subparagraph (iii); 15
 - (iii) it is required on dissolution to transfer its assets and funds to any other recreational club which is approved by the Commissioner in terms of this section or to a public benefit organisation contemplated in paragraph (a)(i) of the definition of a ‘**public benefit organisation**’ in section 30(1) which has been approved in terms of section 30(3); 20
 - (iv) it may not pay any remuneration to any person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered, nor may any remuneration be determined as a percentage of any amounts received or accrued to that recreational club; 25
 - (v) all members must be entitled to annual or seasonal membership; and
 - (vi) members are not allowed to sell their membership rights or any entitlement in terms thereof; 30
- (b) the club undertakes to submit to the Commissioner a copy of any amendment to the constitution or other written instrument under which it is established; and
- (c) the Commissioner is satisfied that the club 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 have become payable by any person under this Act or any other Act administered by the Commissioner. 35 40

(3) Where the constitution or other written instrument under which the club is established does not comply with the provisions of paragraph (a) of subsection (2), it shall be deemed to so comply if a person responsible in a fiduciary position for the funds and assets of such club furnishes the Commissioner with a written undertaking by such club that such club will be administered in compliance with the provisions of this section. 45

(4) Where a club applies for approval before the later of 31 March 2009 or the last day of its first year of assessment, then the Commissioner may approve that club for purposes of this section, or for the purposes of any provision contained in section 10 prior to its amendment by section 10(1)(l) of the Revenue Laws Amendment Act, 2006, with retrospective effect. 50

(5) Where the Commissioner is—

- (a) satisfied that any recreational club approved under subsection (2) has during any year of assessment in any material respect; or 55
- (b) during any year of assessment satisfied that any such recreational club has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution or other written instrument under which it was established to the extent that it relates to the provisions of this section, the Commissioner shall notify the recreational club that he or she intends to withdraw the approval of that 60

recreational club if no corrective steps are taken by that club within a period stated in that notice.

(6) If no corrective steps are taken by a recreational club as contemplated in subsection (5), the Commissioner must withdraw approval of that club with effect from the commencement of the year of assessment contemplated in subsection (5).

(7) If the Commissioner has withdrawn the approval of a recreational club, that club must within six months after the date of that withdrawal (or such longer period as the Commissioner may allow) transfer or take reasonable steps to transfer its remaining assets to another recreational club approved in terms of this section or to a public benefit organisation approved in terms of paragraph (a)(i) of the definition of public benefit organisation that is exempt from normal tax in terms of section 10(1)(cN) and which club or organisation is not a connected person in relation to that club.

(8) If the recreational club fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (7) an amount equal to the market value of those assets which have not been transferred less the *bona fide* liabilities of that recreational club must for purposes of this Act be deemed to be an amount of taxable income which accrued to that recreational club during the year of assessment in which approval was withdrawn.”.

(2) Subsection (1) shall come into operation on 1 April 2007 and shall apply in respect of any year of assessment commencing on or after that date.

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001 and section 31 of Act 32 of 2004

26. Section 36 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (11) for paragraph (a) of the following paragraph:

“(a) expenditure (other than interest or finance charges) on shaft sinking and mine equipment (other than expenditure referred to in paragraph (d)) **and, in the case of a natural oil mine, the cost of laying pipelines from the mining block to the marine terminal or the local refinery, as the case may be**; and”;

(b) by the substitution in subsection (11) for the words in paragraph (c) preceding subparagraph (i) of the following words:

“(c) in the case of any post-1973 gold mine, any other deep level gold mine[,], or any post-1990 gold mine **[or any natural oil mine]**, a capital allowance calculated at the rate of 10 per cent per annum in the case of a post-1973 gold mine or any other deep level gold mine or 12 per cent per annum in the case of any post-1990 gold mine **[or any natural oil mine]** on the amount of the aggregate of—”;

(c) by the substitution in subsection (11) for subparagraph (i) of paragraph (c) of the definition of “capital expenditure” of the following subparagraph:

“(i) the expenditure referred to in paragraphs (a) and (b), excluding any interest and other charges on loans referred to in paragraph (b), if the mine is a post-1973 gold mine[,], or a post-1990 gold mine **[or a natural oil mine]**, or the expenditure referred to in paragraph (a), if the mine is any other deep level gold mine;”;

(d) by the substitution in subsection (11) for the words following subparagraph (v) of paragraph (c) of the definition of “capital expenditure” and preceding the proviso to that paragraph of the following words:

“if the mine is a post-1973 gold mine, a post-1990 gold mine **[or a natural oil mine]**, for the period from the end of the month in which the expenditure is actually incurred up to the end of the year of assessment

immediately preceding the first year of assessment in respect of which the determination of the taxable income derived from the working of such mine does not result in an assessed loss or nil, and, if the mine is any other deep level gold mine for a period of 10 years from the commencement of the year of assessment during which the mine is 5
recognised as any other deep level gold mine”.

Insertion of section 37A of Act 58 of 1962

27. The following section is hereby inserted in the Income Tax Act, 1962, is hereby amended by the insertion after section 37 of the following section:

“Closure rehabilitation company or trust 10

37A. (1) For purposes of determining the taxable income derived by a person carrying on any trade, any cash paid during any year of assessment commencing on or after 2 November 2006 by that person to a company or trust shall be deducted from that person’s income if—

- (a) the sole object of that company or trust is to apply its property solely for rehabilitation upon premature closure, decommissioning and final closure, and post closure coverage of any latent and residual environmental impacts on the area covered in terms of any permit, right, reservation or permission contemplated in paragraph (d)(i)(aa) to restore one or more areas to their natural or predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development; 15
- (b) that company or trust holds assets solely for purposes contemplated in subsection (a);
- (c) that company or trust makes distributions solely for purposes contemplated in subsection (a); and 20
- (d) that person—
 - (i) (aa) holds a permit or right in respect of prospecting, exploration, mining or production, an old order right or OP26 right as defined in item 1 of Schedule II or any reservation or permission for the right to the use of the surface of land as contemplated in item 9 of Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); or 25
 - (bb) is engaged in prospecting, exploration, mining or production in terms of any permit, right, reservation or permission as contemplated in item (aa); or 30
 - (ii) after approval by the Commissioner, paid any cash to that company or trust and that payment was not part of any transaction, operation or scheme designed solely or mainly for purposes of shifting the deduction contemplated in this subsection from another person to that person. 35

(2) The company or trust contemplated in subsection (1) may only hold—

- (a) financial instruments issued by any— 45
 - (i) collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
 - (ii) long-term insurer as regulated in terms of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998); 50
 - (iii) bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
 - (iv) mutual bank as regulated in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- (b) financial instruments of a listed company unless— 55
 - (i) those financial instruments are issued by a person contemplated in paragraph (d); or
 - (ii) those financial instruments are issued by a person that is a connected person in relation to a person contemplated in paragraph (d); 60

- (c) financial instruments issued by any sphere of government in the Republic; or
- (d) any other investments which were held by that company or trust before 18 November 2003.
- (3) To the extent that the Minister of Minerals and Energy is satisfied that all of the areas in terms of any permit, right, reservation or permission contemplated in subsection (1)(d)(i)(aa) that have been rehabilitated as contemplated in subsection (1)(a), the company or trust in respect of those areas must be wound-up or liquidated and its assets remaining after the satisfaction of its liabilities must be transferred to—
- (a) another company or trust established in terms of this section as approved of by the Commissioner; or
- (b) if no such company or trust has been established, to an account or trust prescribed by the Minister of Minerals and Energy as approved of by the Commissioner if the Commissioner is satisfied that such company or trust satisfies the objects of subsection (1)(a).
- (4) If the Minister of Minerals and Energy is satisfied that a company or trust established for the purposes contemplated in section (1)(a)—
- (a) will be able to satisfy all of the liabilities of that company or trust; and
- (b) such company or trust has sufficient assets to rehabilitate and restore, as contemplated in subsection (1)(a), all areas to which any permit, right, reservation or permission contemplated in subsection (1)(d)(i)(aa) relates, as the case may be,
- that company or trust may transfer assets not required for purposes of paragraphs (a) and (b) to another company or trust established in terms of this section as approved by the Commissioner.
- (5) The constitution of a company or the instrument establishing a trust contemplated in this section must incorporate the provisions of this section and any amendments thereto.
- (6) If a company or trust contemplated in this section contravenes any provision of subsection (2) during any year of assessment by holding property other than property contemplated in that subsection—
- (a) an amount of taxable income is deemed to accrue equal to the market value of that other property on the first date that company or trust held that other property; and
- (b) the deemed amount contemplated in paragraph (a) shall be included in the income for the year of assessment of a person contemplated in subsection (1)(d) to the extent that other property is (directly or indirectly) derived from cash paid by that person to that company or trust.
- (7) If the company or trust contemplated in this section contravenes any provision of subsection (1)(a) during any year of assessment by distributing property from that company or trust for a purpose other than—
- (a) rehabilitation upon premature closure;
- (b) decommissioning and final closure;
- (c) post closure coverage of any latent or residual environmental impacts; or
- (d) transfer to another company, trust, or account established for the purposes contemplated in subsection (1)(a)—
- (i) an amount of taxable income is deemed to accrue equal to the market value of that other property on the first date that company or trust distributes that other property; and
- (ii) the deemed amount contemplated in paragraph (a) shall be included in the income for the year of assessment of a person contemplated in subsection (1)(d) to the extent that other property is (directly or indirectly) derived from cash paid by that person to that company or trust.
- (8) Where the Commissioner is satisfied that a company or trust contemplated in this section has contravened any provision of this section during any year of assessment, the Commissioner may—
- (a) include an amount equal to twice the market value of all of the property held in that company or trust on the date of that contravention as taxable income; and

- (b) the amount contemplated in paragraph (a) shall be included in the income for the year of assessment of a person contemplated in subsection (1)(d) to the extent that property is (directly or indirectly) derived from cash paid by that person to that company or trust: 5
 Provided that the Commissioner may reduce the amount of taxable income contemplated under this subsection as the Commissioner may think fit.”

Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004 and section 37 of Act 31 of 2005

28. (1) Section 41 of the Income Tax Act, 1962, is hereby amended— 10
- (a) by the substitution in subsection (1) for subparagraph (bb) of paragraph (ii) of the proviso to the definition of **“domestic financial instrument holding company”** of the following subparagraph: 15
 “(bb) influenced companies in relation to that company; [and]”;
- (b) by the substitution in subsection (1) for paragraph (iii) of the proviso to the definition of **“domestic financial instrument holding company”** of the following paragraph: 15
 “(iii) any financial instrument [the] with a market value [of which is] equal to [its] base cost other than a financial instrument contemplated in paragraphs (a), (b) and (c) of this definition; and”; 20
- (c) by the addition in subsection (1) to the proviso to the definition of **“domestic financial instrument holding company”** of the following paragraph: 20
 “(iv) any instrument defined in section 24J with a term of less than 12 months other than a financial instrument contemplated in paragraphs (a), (b) and (c) of this definition.”; 25
- (d) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the definition of **“foreign financial instrument holding company”** of the following words: 25
 “any financial instrument arising from the principal trading activities of that foreign company, or of any influenced company in relation to that foreign company, which is a banker or financier, insurer[, dealer] or broker that [mainly] conducts more business in the country of residence of that foreign company, or in the country of residence of that influenced company, as the case may be, than in any other single country and that company—”; 30
- (e) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the definition of **“foreign financial instrument holding company”** of the following subparagraph: 35
 “(i) regularly accepts deposits or premiums or makes loans, issues letters of credit, provides guarantees or effects similar transactions for the account of clients, or receives commissions from clients, who are not connected persons in relation to that company; and”; 40
- (f) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of **“foreign financial instrument holding company”** of the following subparagraph: 45
 “(ii) derives more than 50 per cent of its income or gains from principal trading activities with respect to those clients; [or]”; 45
- (g) by the substitution in subsection (1) for item (B) of subparagraph (bb) of paragraph (i) of the proviso to the definition of **“foreign financial instrument holding company”** of the following item: 50
 “(B) influenced companies in relation to that company; [and]”;
- (h) by the substitution in subsection (1) for subparagraph (cc) of paragraph (i) of the proviso to the definition of **“foreign financial instrument holding company”** of the following subparagraph: 50
 “(cc) any financial instrument [the] with a market value [of which is] equal to [its] base cost other than a financial instrument contemplated in paragraphs (a), (b) and (c) of this definition; and”; 55
- (i) by the insertion in subsection (1) after subparagraph (cc) of paragraph (i) of the proviso to paragraph (c) of the definition of **“foreign financial instrument holding company”** of the following subparagraph: 60

“(dd) any instrument defined in section 24J with a term of less than 12 months other than a financial instrument contemplated in paragraphs (a), (b) and (c) of this definition.”; and

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

“(2) The provisions of this Part must, subject to subsection (5), apply in respect of a company formation transaction, a share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24B(2) and (3)[,] and 103 and Part IIA of Chapter III.”.

(2) Paragraphs (a) to (h) are deemed to have come into operation on 8 November 2005 and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 42 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 50 of Act 45 of 2003, section 33 of Act 32 of 2004 and section 38 of Act 31 of 2005

29. Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for the words after paragraph (b) of the following words:

“that person must be deemed to have disposed of that share as trading stock to the extent that any amount received by or accrued to that person in respect of the disposal of that share is less than or equal to the market value of that share at the beginning of such period of 18 months.”.

Amendment of section 43 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 51 of Act 45 of 2003, section 34 of Act 32 of 2004 and section 39 of Act 31 of 2005

30. Section 43 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(c) for subparagraph (ii) of the following subparagraph:

“(ii) in any other case, the acquiring company after that disposal and any other share for share transaction entered into in terms of any offer made on the same terms as that transaction and which is accepted within a period of 90 days after that disposal holds more than 50 per cent of the equity shares of the target company; and”.

Amendment of section 47 of Act 58 of 1962, as repealed by section 25 of Act 21 of 1995 and inserted by section 34 of Act 74 of 2002 and amended by section 55 of Act 45 of 2003, section 37 of Act 32 of 2004 and section 43 of Act 31 of 2005

31. Section 47 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation, winding up or deregistration of that liquidating company, that holding company must disregard that disposal for purposes of determining its taxable income [or], assessed loss, aggregate capital gain or aggregate capital loss.”.

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, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004 and section 47 of Act 31 of 2005

32. Section 64B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words following subparagraph (iv) of paragraph (a) of the definition of “dividend cycle” of the following words:

“and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been [distributed] declared as contemplated in section [64C(2)] 64C(6);”;

- (b) by the substitution in subsection (13) for paragraph (a) 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”;
- (c) by the deletion in subsection (13) of paragraph (b); and
- (d) by the deletion of subsection (14).

Amendment of section 79 of Act 58 of 1962, as amended by section 26 of Act 69 of 1975, section 23 of Act 91 of 1982, section 32 of Act 21 of 1995, section 23 of Act 36 of 1996, section 26 of Act 5 of 2001 and section 14 of Act 34 of 2004

33. Section 79 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the words after paragraph (c) preceding the proviso of the following words:
 “he shall raise an assessment or assessments in respect of the said amounts, notwithstanding that an assessment or assessments may have been made upon the person concerned in respect of the year or years of assessment in respect of which the amount or amounts in question is or are assessable, and notwithstanding the provisions of sections 81(5)₂ [and] 83(18) and 83A (12):”;
- (b) by the substitution in subsection (1) for paragraph (iv) of the proviso of the following paragraph:
 “(iv) in respect of any amount, if any previous assessment made on the person concerned has in respect of that amount been amended or reduced pursuant to [any order made by a special court for hearing income tax appeals constituted under the provisions of this Act,]—
 (aa) any decision made by the Tax Board constituted under this Act;
 (bb) any order, excluding any order made in terms of section 83(13)(a)(iii) made by the tax court constituted under this Act;
 (cc) the Commissioner conceding an appeal as prescribed in terms of the rules contemplated in section 107A(2) of this Act;
 (dd) a dispute being resolved in terms of the alternative dispute resolution procedures prescribed in the rules contemplated in section 107A(2) of this Act; or
 (ee) the settlement of a dispute in terms of Part IIIA of Chapter III of this Act, unless the Commissioner is satisfied that the decision, order, concession or resolution of the dispute or settlement in question was obtained by fraud or misrepresentation or non-disclosure of material facts; or”.

Insertion of Part IIA in Chapter III of Act 58 of 1962

34. (1) The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part II:

“Part IIA

Impermissible tax avoidance arrangements

80A. An avoidance arrangement is an impermissible avoidance arrangement if its sole or main purpose was to obtain a tax benefit and—

- (a) in the context of business—
 (i) it was entered into or carried out by means or in a manner which would not normally be employed for *bona fide* business purposes, other than obtaining a tax benefit; or
 (ii) it lacks commercial substance, in whole or in part, taking into account the provisions of section 80C;
- (b) in a context other than business, it was entered into or carried out by means or in a manner which would not normally be employed for a *bona fide* purpose, other than obtaining a tax benefit; or
- (c) in any context—

- (i) it has created rights or obligations that would not normally be created between persons dealing at arm's length; or
- (ii) it would result directly or indirectly in the misuse or abuse of the provisions of this Act (including the provisions of this Part).

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Tax consequences of impermissible tax avoidance

80B. (1) The Commissioner may determine the tax consequences under this Act of any impermissible avoidance arrangement for any party by—

- (a) disregarding, combining, or re-characterising any steps in or parts of the impermissible avoidance arrangement;
- (b) disregarding any accommodating or tax-indifferent party or treating any accommodating or tax-indifferent party and any other party as one and the same person;
- (c) deeming persons who are connected persons in relation to each other to be one and the same person for purposes of determining the tax treatment of any amount;
- (d) reallocating any gross income, receipt or accrual of a capital nature, expenditure or rebate amongst the parties;
- (e) re-characterising any gross income, receipt or accrual of a capital nature or expenditure; or
- (f) treating the impermissible avoidance arrangement as if it had not been entered into or carried out, or in such other manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of the relevant tax benefit.

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(2) Subject to the time limits imposed by section 79, 79A(2)(a) and 81(2)(b), the Commissioner must make compensating adjustments that he or she is satisfied are necessary and appropriate to ensure the consistent treatment of all parties to the impermissible avoidance arrangement.

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Lack of commercial substance

80C. (1) For purposes of this Part, an avoidance arrangement lacks commercial substance if it would result in a significant tax benefit for a party (but for the provisions of this Part) but does not have a significant effect upon either the business risks or net cash flows of that party apart from any effect attributable to the tax benefit that would be obtained but for the provisions of this Part.

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(2) For purposes of this Part, characteristics of an avoidance arrangement that are indicative of a lack of commercial substance include but are not limited to—

- (a) the legal substance of the avoidance arrangement as a whole is inconsistent with, or differs significantly from, the legal form of its individual steps; or
- (b) the inclusion or presence of—
 - (i) round trip financing as described in section 80D; or
 - (ii) an accommodating or tax indifferent party as described in section 80E; or
 - (iii) elements that have the effect of offsetting or cancelling each other.

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Round trip financing

80D. (1) Round trip financing includes any avoidance arrangement in which—

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- (a) funds are transferred between or among the parties (round tripped amounts); and
- (b) the transfer of the funds would—
 - (i) result, directly or indirectly, in a tax benefit but for the provisions of this Part; and

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- (ii) significantly reduce, offset or eliminate any business risk incurred by any party in connection with the avoidance arrangement.
- (2) This section applies to any round tripped amounts without regard to—
- (a) whether or not the round tripped amounts can be traced to funds transferred to or received by any party in connection with the avoidance arrangement;
- (b) the timing or sequence in which round tripped amounts are transferred or received; or
- (c) the means by or manner in which round tripped amounts are transferred or received.
- (3) For the purposes of this section, the term ‘funds’ includes any cash, cash equivalents or any right or obligation to receive or pay the same.

Accommodating or tax-indifferent parties 15

- 80E.** (1) A party to an avoidance arrangement is an accommodating or tax-indifferent party if—
- (a) any amount derived by the party in connection with the avoidance arrangement is either—
- (i) not subject to normal tax; or
- (ii) significantly offset either by any expenditure or loss incurred by the party in connection with that avoidance arrangement or any assessed loss of that party; and
- (b) either—
- (i) as a direct or indirect result of the participation of that party an amount that would have—
- (aa) been included in the gross income (including the recoupment of any amount) or receipts or accruals of a capital nature of another party would be included in the gross income or receipts or accruals of a capital nature of that party;
- (bb) constituted a non-deductible expenditure or loss in the hands of another party would be treated as a deductible expenditure by that other party;
- (cc) constituted revenue in the hands of another party would be treated as capital by that other party; or
- (dd) given rise to taxable income to another party would either not be included in gross income or be exempt from normal tax; or
- (ii) the participation of that party directly or indirectly involves a prepayment by any other party.
- (2) A person may be an accommodating or tax-indifferent party whether or not that person is a connected person in relation to any party.
- (3) The provisions of this section do not apply if either—
- (a) the amounts derived by the party in question are cumulatively subject to income tax by one or more spheres of government of countries other than the Republic that are subject to tax in another country which is equal to at least two-thirds of the amount of normal tax which would have been payable in connection with those amounts had they been subject to tax under this Act; or
- (b) the party in question continues to engage directly in substantive active trading activities in connection with the avoidance arrangement for a period of at least 18 months: Provided these activities must be attributable to a place of business, place, site, agricultural land, vessel, vehicle, rolling stock or aircraft that would constitute a foreign business establishment as defined in section 9D(1) if it were located outside the Republic and the party in question were a controlled foreign company.
- (4) For the purposes of subsection (3)(a), the amount of tax imposed by another country must be determined after taking into account any applicable agreements for the prevention of double taxation and any

assessed loss, credit or rebate to which the party in question may be entitled or any other right of recovery to which that party or any connected person in relation to that party may be entitled.

Treatment of connected persons and accommodating or tax-indifferent parties

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80F. For the purposes of applying section 80C or determining whether or not a tax benefit exists for purposes of this Part, the Commissioner may—

- (a) treat parties who are connected persons in relation to each other as one and the same person; or
- (b) disregard any accommodating or tax-indifferent party or treat any accommodating or tax-indifferent party and any other party as one and the same person.

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Presumption of purpose

80G. (1) An avoidance arrangement is presumed to have been entered into or carried out for the sole or main purpose of obtaining a tax benefit unless and until the party obtaining a tax benefit proves that, reasonably considered in light of the relevant facts and circumstances, obtaining a tax benefit was not the sole or main purpose of the avoidance arrangement.

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(2) The purpose of a step in or part of an avoidance arrangement may be different from a purpose attributable to the avoidance arrangement as a whole.

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Application to steps in or parts of an arrangement

80H. The Commissioner may apply the provisions of this Part to steps in or parts of an arrangement.

Use in the alternative

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80I. The Commissioner may apply the provisions of this Part in the alternative for or in addition to any other basis for raising an assessment.

Notice

80J. (1) The Commissioner must, prior to determining any liability of a party for tax under section 80B, give the party notice that he or she believes that the provisions of this Part may apply in respect of an arrangement and must set out in the notice his or her reasons therefor.

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(2) A party who receives notice in terms of subsection (1) may, within 60 days after the date of that notice or such longer period as the Commissioner may allow, submit reasons to the Commissioner why the provisions of this Part should not be applied.

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(3) The Commissioner must within 180 days of receipt of the reasons or the expiry of the period contemplated in subsection (2)—

- (a) request additional information in order to determine whether or not this Part applies in respect of an arrangement;
- (b) give notice to the party that the notice in terms of subsection (1) has been withdrawn; or
- (c) determine the liability of that party for tax in terms of this Part.

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(4) If at any stage after giving notice to the party in terms of subsection (1), additional information comes to the knowledge of the Commissioner, he or she may revise or modify his or her reasons for applying this Part or, if the notice has been withdrawn, give notice in terms of subsection (1).

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Interest

80K. Where the Commissioner has applied this Part in determining a party's liability for tax, the Commissioner may not exercise his or her discretion in terms of section 89*quat* (3) or (3A) to direct that interest is not

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payable in respect of that portion of any tax which is attributable to the application of this Part.

Definitions

80L. For purposes of this Part—

‘arrangement’ means any transaction, operation, scheme, agreement or understanding (whether enforceable or not), including all steps therein or parts thereof, and includes any of the foregoing involving the alienation of property;

‘avoidance arrangement’ means any arrangement that results in a tax benefit;

‘impermissible avoidance arrangement’ means any avoidance arrangement described in section 80A;

‘party’ means any—

(a) person;

(b) permanent establishment in the Republic of a person who is not a resident;

(c) permanent establishment outside the Republic of a person who is a resident;

(d) partnership; or

(e) joint venture,

who participates or takes part in an arrangement;

‘tax’ includes any tax, levy or duty imposed by this Act or any other law administered by the Commissioner;

‘tax benefit’ includes any avoidance, postponement or reduction of any liability for tax.”.

(2) Subsection (1) is deemed to have come into operation on 2 November 2006 and applies to any arrangement (or any steps therein or parts thereof) entered into on or after that date.

Amendment of section 102 of Act 58 of 1962, as substituted by section 28 of Act 69 of 1975 and amended by section 27 of Act 91 of 1982, section 44 of Act 30 of 1998 and section 61 of Act 60 of 2001 and substituted by section 30 of Act 30 of 2002

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

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

“(1) Any amount paid by any person in terms of the provisions of this Act shall be refundable, subject to the provisions of section 102A, to the extent that such amount exceeds—”;

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

“(a) that amount was paid in accordance with the practice generally prevailing at the date of the payment; **[or]**”;

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

“(c) the amount to be refunded is less than R100 or less than such other amount as the Commissioner may determine by Notice in the Gazette; or;

(d) that person has failed to furnish a return for any year of assessment as required by this Act, until that person has furnished such return as required.”; and

(d) by the addition after subsection (3) of the following subsection:

“(4) Where the amount that would be refunded under subsection (1) is determined to be less than R100 or less than such other amount as the Commissioner may determine by Notice in the Gazette, the amount so determined shall not be refunded in respect of that year of assessment but shall be carried forward to the immediately succeeding year of assessment.”.

Amendment of section 103 of Act 58 of 1962, as amended by section 14 of Act 101 of 1978, section 37 of Act 121 of 1984, section 19 of Act 70 of 1989, section 29 of Act 36 of 1996, section 45 of Act 30 of 1998, section 52 of Act 59 of 2000, section 33 of Act 5 of 2001 and section 42 of Act 32 of 2004

36. (1) Section 103 of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the deletion of subsections (1) and (3);
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) Any decision of the Commissioner under subsection [(1),] (2) [or (3)] shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the [transaction, operation, scheme,] agreement or change in shareholding or members’ interests or trustees or beneficiaries of the trust in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy imposed by this Act or any previous Income Tax Act or any other law administered by the Commissioner, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved[—
- (a) **in the case of any such transaction, operation or scheme, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability or the reduction of the amount of such liability; or** 20
- (b) in the case of any such agreement or change in shareholding or members’ interests or trustees or beneficiaries of such trust, that it has been entered into or effected solely or mainly for the purpose of utilising the assessed loss, balance of assessed loss, capital loss or assessed capital loss in question in order to avoid or postpone such liability or to reduce the amount thereof.”; 25
- (c) by the substitution in subsection (5) for subparagraph (i) of paragraph (a) of the following subparagraph:
- “(i) any taxpayer has ceded the right to receive any amount [of income] in exchange for any amount of dividends; and”; and 30
- (d) by the deletion of subsection (7).
- (2) Subsection (1) is deemed to have come into operation on 2 November 2006 and shall apply to any transaction entered into on or after that date.

Amendment of paragraph 5 of the Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 21 of Act 72 of 1963, section 25 of Act 90 of 1964, section 35 of Act 88 of 1971, section 35 of Act 69 of 1975, section 27 of Act 113 of 1977, section 28 of Act 104 of 1980, section 48 of Act 94 of 1983 and section 25 of Act 65 of 1986 35

37. (1) Paragraph 5 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph: 40
- “(1) The deduction to be allowed in determining the amount required to be included in the taxpayer’s gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question—
- (a) have been derived in consequence of or following upon the taxpayer’s retirement [or]; 45
- (b) are deemed to have accrued to him immediately prior to his death [,]; or
- (c) accrued subsequent to his retirement and in consequence of or following upon an event contemplated by the rules of the pension fund, provident fund or retirement annuity fund or as a result of the approval of a scheme in terms of section 15B of the Pension Funds Act, 1956 (Act No. 24 of 1956), other than an event contemplated in items (a) or (b) of this subparagraph, 50
- be an amount (not exceeding the aggregate value of such lump sum benefits) equal to the [greater of the following amounts] amount [, namely—
- (a) **an amount]** determined in accordance with formula B in relation to such taxpayer, but subject to the provisions of sub-paragraph (2); [or 55
- (b) **an amount equal to the sum of the amounts which would have been allowed to be deducted in terms of paragraph (b)ter of the definition of ‘gross income’ in section seven of the Income Tax Act, 1941, prior to its amendment by the Income Tax Act, 1961 (Act No. 80 of 1961), if such lump sum benefits had been received by or had accrued to such taxpayer** 60

on the fourteenth day of March, 1961, and had been required to be included in his gross income in terms of said paragraph, less the aggregate of any deductions which may have been allowed to the taxpayer under this subparagraph or sub-paragraph (1) of paragraph 5 of the Fourth Schedule to the Income Tax Act, 1941, in respect of any years of assessment preceding the year of assessment in question].”

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2006.

Amendment of paragraph 6 of the Second Schedule to Act 58 of 1962, as substituted by section 26 of Act 90 of 1964 and amended by section 18 of Act 104 of 1979, section 5 of Act 30 of 1984, section 32 of Act 141 of 1992 and section 51 of Act 30 of 1998

38. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph 6 for the words preceding item (a) of the following words:

“The deduction to be allowed in determining the amount required to be included in the taxpayer’s gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question—

(1) have been derived in consequence of or following upon his withdrawal or resignation from any pension funds, provident funds or retirement annuity funds or the winding up of any such funds; or

(2) accrued subsequent to his withdrawal or resignation from any pension funds, provident funds or retirement annuity funds or the winding up of any such funds and in consequence of or following upon an event contemplated by the rules of any such fund or as a result of the approval of a scheme in terms of section 15B of the Pension Funds Act, 1956 (Act No. 24 of 1956), other than an event contemplated in paragraph (1) of this subparagraph,

be the sum of the following amounts, namely—”.

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2006.

Amendment of paragraph 1 of the Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005 and section 28 of Act 9 of 2006

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

(a) by the substitution for subparagraph (b) of the definition of “**personal service company**” of the following subparagraph:

“(b) such person or such company is subject to the control or supervision of such client as to the manner in which[, or hours during which,] the duties are performed or are to be performed in rendering such service and must be mainly performed at the premises of the client; or”;

(b) by the deletion of paragraph (c) of the definition of “**personal service company**”;

(c) by the substitution for the words after paragraph (d) of the definition of “**personal service company**” of the following words:

“except where such company throughout the year of assessment, employs **[more than three]** three or more full-time employees who are on a full-time basis engaged in the business of such company of rendering any such service, other than any employee who is a

- shareholder or member of the company or is a connected person in relation to such person;”;
- (d) by the substitution for subparagraph (b) of the definition of **“personal service trust”** of the following subparagraph:
- “(b) such person or such trust is subject to the control or supervision of such client as to the manner in which[, or hours during which,] the duties are performed or are to be performed in rendering such service and those duties must be mainly performed at the premises of the client; or”;
- (e) by the deletion of paragraph (c) of the definition of **“personal service trust”**;
- (f) by the substitution for the words after paragraph (d) of the definition of **“personal service trust”** of the following:
- “except where such trust throughout the year of assessment, employs **[more than three]** three or more full-time employees who are on a full-time basis engaged in the business of such trust of rendering any such service, other than any employee who is a connected person in relation to such person or trust;”;
- (g) by the substitution for paragraph (a) of the definition of **“provisional taxpayer”** of the following paragraph:
- “(a) any person (other than a company) who derives by way of income any amount which does not constitute—
- (i) remuneration in terms of the definition of that expression as defined in this paragraph; or
- (ii) an allowance or advance contemplated in section 8(1), but shall exclude for a period of three years as from the first year of assessment commencing on or after 1 April 2007—
- (aa) any public benefit organisation as contemplated in paragraph (a) of the definition of **‘public benefit organisation’** in section 30(1) that has been approved by the Commissioner in terms of section 30(3); and
- (bb) any recreational club as contemplated in the definition of **‘recreational club’** in section 30A(1) that has been approved by the Commissioner in terms of section 30A(2):
- Provided that the Commissioner may extend the periods as contemplated in subparagraph (aa) and (bb) to such later date as he may determine by notice in the *Gazette*.”; and
- (h) by the substitution for the definition of **“tax threshold”** of the following definition:
- “**‘tax threshold’** in relation to a natural person means the maximum amount of taxable income of that person in respect of a year of assessment which would result in no tax payable when the rates of tax contemplated in section 5 of this Act and the rebates contemplated in section 6 of this Act for that year of assessment [is] are applied to the taxable income of that person.”.

Amendment of paragraph 2 of the Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001 and section 21 of Act 16 of 2004

40. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following subparagraph:

“(1A) Notwithstanding the provisions of subparagraph (1), a person shall not be required to deduct or withhold employee’s tax solely by virtue of paragraph (d) of the definition of **‘personal service company’** or paragraph (d) of the definition of **‘personal service trust’** where the company or trust has provided that person with an affidavit or solemn declaration stating that the relevant paragraphs do not apply and that person relied on that affidavit or declaration in good faith.”.

Amendment of paragraph 9 of the Fourth Schedule to Act 58 of 1962 as amended by section 32 of Act 103 of 1976

41. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) The amount to be deducted or withheld in respect of employees’ tax from any lump sum to which paragraph (d) or (e) of the definition of “gross income” in section 1 of this Act or section 7A thereof applies, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner’s determination of the amount to be so deducted or withheld shall be final: Provided that no amount shall be so deducted or withheld in respect of any lump sum payment contemplated in paragraphs 5(1)(c) or 6(2) of the Second Schedule that is received by or accrues to the employee on or before 10 November 2006 or such later date that the Minister may determine by notice in the Gazette.”.

Amendment of paragraph 11 of the Fourth Schedule to Act 58 of 1962, as substituted by section 39 of Act 21 of 1995 and section 84 of Act 45 of 2003

42. Paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (a) for the words after item (ii) of the following words:

“in order to alleviate hardship to that employee due to circumstances outside the control of the employee [**or where the remuneration constitutes commission**] or to correct any error in regard to the calculation of employees’ tax, or in the case of remuneration constituting commission or where the remuneration is received by a personal service company or a personal service trust and [the employer must comply with] that directive must be complied with; or”.

Amendment of paragraph 11B of the Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988, as amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000, section 33 of Act 30 of 2002, section 56 of Act 74 of 2002, section 22 of Act 16 of 2004

43. Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for paragraph (h) of the definition of “net remuneration” of the following paragraph:

“(h) the amount of any allowance or advance contemplated in [**paragraph**] paragraphs (c) and (cA) of the definition of ‘remuneration’ in paragraph 1;”.

Amendment of paragraph 11 of the Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001

44. Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (b) of the following item:

“(b) by a company in respect of the issue or cancellation of a share or member’s interest in the company, or by a company in respect of the granting of an option to acquire a share, member’s interest or debenture in that company;”.

Amendment of paragraph 20 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004 and section 68 of Act 31 of 2005

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

(a) by the insertion in subparagraph (1) after subitem (iv) of item (h) of the following subitem:

“(v) an asset which was acquired by a resident by way of inheritance from the deceased estate of a person who at the time of his or her death was not resident—

- (aa) the market value of that asset immediately before the death of that deceased person; and
- (bb) any expenditure contemplated in this paragraph incurred by the executor of that deceased estate in respect of that asset in the process of liquidation or distribution of that deceased estate: 5
- Provided that this subitem does not apply in respect of any asset so acquired which constituted an asset of that deceased person as contemplated in paragraph 2(1)(b).”;
- (b) by the substitution in subparagraph (1) for the proviso to item (h) of the following proviso: 10
- “Provided that where subitem (i), (ii)(bb) or (dd) applies, that person must for purposes of this paragraph disregard any expenditure actually incurred by that person in respect of that asset prior to the date on which— 15
- (a) the market value or value placed on the asset under the Seventh Schedule, as the case may be, is determined[,]; or
- (b) the asset was disposed of, where the amount received or accrued from the disposal is taken into account in determining the gain or loss in terms of section 8C.”; 20
- (c) by the substitution in subparagraph (3) for item (b) of the following paragraph: 25
- “(b) has for any reason been reduced or recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates), to the extent which such amount is not taken into account as a recoupment in terms of section 8(4)(a) or paragraph (j) of the definition of ‘gross income’ of an amount contemplated in item (a)[.]; and”;
- (d) by the addition to subparagraph (3) of the following item: 30
- “(c) is exempt from tax in terms of section 10(1)(y) or (yA) and is granted or paid for purposes of the acquisition of that asset: Provided that the provisions of items (b) and (c) shall not apply in respect of a government grant or government scrapping payment that is provided in respect of programmes or schemes that the Minister has identified by notice in the *Gazette* for purposes of this subparagraph.”; and 35
- (e) by the addition of the following subparagraph: 40
- “(4) Expenditure incurred by a person in respect of the acquisition of an asset shall be reduced by the amount of any foreign exchange gain as contemplated in section 24I, or increased by the amount of any foreign exchange loss as so contemplated, if that gain or loss is not included in or deducted from the income of that person, or any other person forming part of the same group of companies as that person, in terms of section 24I(11A).”.
- (2) Paragraph (e) of subsection (1) shall be deemed to have come into operation on 31 December 2006 and shall apply in respect of any year of assessment ending on or after that date. 45

Amendment of paragraph 24 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, amended by section 76 of Act 60 of 2001, section 72 of Act 74 of 2002 and section 69 of Act 31 of 2005

46. Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph: 50
- “(4) The provisions of this paragraph do not apply in respect of any asset of a person who became a resident before [valuation date] 1 October 2001.”.

Amendment of paragraph 29 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of act 5 of 2001, amended by section 81 of Act 60 of 2001, section 38 of Act 30 of 2002 and section 76 of Act 74 of 2002 55

47. Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subparagraph (3) of the following subparagraph:

- “ (3) For the purposes of this paragraph[—
- (a) **the last price quoted for a specific day means the average of the buying and selling prices quoted at close of business on that day; and**
- (b)] **‘controlling interest’** in a company, means an interest in more than 5
35 per cent of the equity share capital of that company.”;
- (b) by the substitution for subparagraph (4) of the following subparagraph:
“(4) For the purposes of paragraphs 26(1)(a) and 27(3), a person may only adopt or determine the market value as the valuation date value of that asset if— 10
- (a) in the case where the valuation date is 1 October 2001—
- (i) that person has valued that asset [**within two years after valuation date**] on or before 30 September 2004;
- (ii) the price of that asset has been published by the Commissioner in terms of this paragraph in the *Gazette*; or 15
- (iii) that person has acquired that asset from that person’s spouse as contemplated in paragraph 67 and the transferor spouse had adopted or determined a market value in terms of this paragraph, and for this purpose the transferee spouse must be treated as having adopted or determined that same market 20
value; or
- (b) in the case where the valuation date is after 1 October 2001—
- (i) that person has valued that asset within two years after valuation date; or
- (ii) that asset is one contemplated in paragraph 31(1)(a) or (c)(i) 25
and the market value of that asset on valuation date is determined in terms of one of those paragraphs.”;
- (c) by the substitution in subparagraph (5) for the words after item (c) of the following words:
“that person may only adopt the market value as the valuation date value 30
of that asset if that person has furnished proof of that valuation to the Commissioner in the form as the Commissioner may prescribe, with the first return submitted by that person after the period contemplated in subparagraph (4) or, if it was not submitted with that return, within such 35
period as the Commissioner may allow if proof is submitted that the valuation was performed within the period prescribed.”; and
- (d) by the substitution for subparagraph (8) of the following subparagraph:
“(8) [**The period contemplated in subparagraph (4) may be extended by the Minister by notice in the Gazette**] Where the valuation date of a person is after 1 October 2001 the provisions of subparagraph 40
(1)(a), (1)(b)(i), (2), (2A), (3), (5) and (6)(a) do not apply.”.

Amendment of paragraph 30 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 82 of Act 60 of 2001, section 77 of Act 74 of 2002, section 98 of Act 45 of 2003 and section 70 of Act 31 of 2005

48. Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby 45
amended by the substitution in paragraph (3) for item (b) of the following item:
“(b) any part of the expenditure contemplated in paragraph 20(1)(a), (c) or (e)
incurred before, on or after the valuation date [**which**] is or was allowable as
a deduction in determining the taxable income of that person before the
inclusion of any taxable capital gain; and” 50

Amendment of paragraph 31 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of act 5 of 2001, amended by section 83 of Act 60 of 2001 and section 78 of act 74 of 2002

49. Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby 55
amended—
- (a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:
“(1) The market value of an asset on a specified date is in the case
of—”;

- (b) by the substitution in subparagraph (1) for item (a) of the following item:
 “(a) an asset which is a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange, [is] the ruling price in respect of that financial on the last business day before [disposal of that financial instrument] that date;”;
- (c) by the substitution in subparagraph (1) for subitems (i) and (ii) of item (c) of the following subitems:
 “(i) any company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1 of the Act, or any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002, carried on in the Republic, the price at which a participatory interest can be sold to the management company of the scheme on [the] that date [of disposal]; or
 (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’, the price at which a participatory interest can be sold to the management company of the scheme on [the] that date [of disposal] or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm’s length in an open market on that date;”;
- (d) by the substitution in subparagraph (1)(f) for the words preceding subitem (i) of the following words:
 “[in the case of] any asset which constitutes immovable property on which a *bona fide* farming undertaking is being carried on, subject to subparagraph (4), either—”.

Amendment of paragraph 40 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 89 of Act 60 of 2001 and section 82 of Act 74 of 2002

50. Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph (2) for the words preceding item (a) of the following words:

- “Subject to [subparagraph] paragraph 12(5), where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(a) or an approved public benefit organisation as contemplated in paragraph 62) or a trustee of a trust—”.

Amendment of paragraph 43 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001 and substituted by section 84 of Act 74 of 2002 and amended by section 101 of Act 45 of 2003 and section 75 of Act 31 of 2005

51. Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

- “(2) Where a person disposes of an asset, (other than an asset contemplated in subparagraph (1) or (4)), for proceeds which are either received or accrued or denominated for purposes of financial reporting of a permanent establishment of that person in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset which is either actually incurred or so denominated in another currency (hereinafter referred to as the ‘currency of expenditure’), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—”.

Amendment of paragraph 62 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 103 of Act 45 of 2003.

52. Paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (b) of the following subparagraph:

- “(b) a public benefit organisation [**exempt from tax in terms of section 10(1)(cN)**] contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) that has been approved by the Commissioner in terms of section 30(3);”;
- (b) by the deletion of the word “or” at the end of subparagraph (c) and the addition of the word “or” at the end of subparagraph (d); and
- (c) by the addition of the following subparagraph:
 “(e) a recreational club which is a company, society or other organisation as contemplated in the definition of ‘recreational club’ in section 30A(1) that has been approved by the Commissioner in terms of section 30A.”.

Insertion of paragraph 63A in the Eighth Schedule to Act 58 of 1962

53. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 63 of the following paragraph:

- “**63. A Public benefit organisations.**—A public benefit organisation approved by the Commissioner in terms of section 30(3) must disregard any capital gain or capital loss determined in respect of the disposal of an asset if—
- (a) that public benefit organisation did not use that asset on or after valuation date in carrying on any business undertaking or trading activity; or
- (b) substantially the whole of the use of that asset by that public benefit organisation on or after valuation date was directed at—
- (i) a purpose other than carrying on a business undertaking or trading activity; or
- (ii) carrying on a business undertaking or trading activity contemplated in section 10(1)(cN)(ii)(a), (b) or (c).”.

Amendment of paragraph 64 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 78 of Act 31 of 2005

54. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 64 of the following paragraph:

- “**64. Asset used to produce exempt income.**— A person must disregard any capital gain or capital loss in respect of the disposal of an asset[—
- (a)]which is used by that person solely to produce amounts which are exempt from normal tax in terms of section 10, other than receipts and accruals contemplated in paragraphs (cN), (cO), (i)(xv), (k) and (m) of subsection (1) thereof[; or
- (b) **where substantially the whole of the use of that asset from the valuation date by that person, which is a public benefit organisation approved by the Commissioner in terms of section 30(3), is in carrying on a public benefit activity].”.**

Amendment of paragraph 64A of the Eighth Schedule to Act 58 of 1962, as inserted by section 92 of Act 74 of 2002

55. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 64A of the following paragraph:

- “**64A. Awards in terms of the Restitution of Land Rights Act and government scrapping payments.**— A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving—
- (a) restitution of a right to land, an award or compensation in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); or
- (b) a government scrapping payment, if the Minister has by Notice in the *Gazette* identified the programme or scheme for purposes of this paragraph.”.

Insertion of paragraph 65B in Eighth Schedule to Act 58 of 1962

56. The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 65 of the following paragraph:

- “**65B. Disposal by recreational club.**— (1) A recreational club approved in terms of section 30A may elect that this paragraph applies in respect of the disposal of an asset the whole of which was used mainly for purposes of providing social and recreational facilities and amenities for members of that club, where—
- (a) proceeds accrue to that club in respect of that disposal;
 - (b) those proceeds are equal to or exceed the base cost of that asset;
 - (c)
 - (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more replacement assets all of which will be used mainly for such purposes;
 - (ii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 12 months after the date of the disposal of that asset; and
 - (iii) the replacement asset or assets will all be brought into use within three years of the disposal of that asset:
- Provided that the Commissioner may extend the period within which the contract must be concluded or asset brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and
- (d) that asset is not deemed to have been disposed of and to have been reacquired by that club.
- (2) Where a club has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (3), (4) and (5) be disregarded when determining that club’s aggregate capital gain or aggregate capital loss.
- (3) Where a club acquires more than one replacement asset as contemplated in subparagraph (1), that club must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.
- (4) Where a club during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset, has not otherwise been treated as a capital gain in terms of this paragraph, that club must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.
- (5) Where a club fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in subparagraph (1)(d)(iii), that club must—
- (a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date on which the relevant period ends;
 - (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and
 - (c) treat that interest as a capital gain on the date contemplated in item (a) when determining that club’s aggregate capital gain or aggregate capital loss.”.

Amendment of paragraph 67 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 104 of Act 60 of 2001 and section 108 of Act 45 of 2003

57. Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (b) of the following item:

- “(b) The transferee must be treated as having—
- (i) acquired the asset on the same date that such asset was acquired by the transferor;
 - (ii) **[acquired the asset for]** incurred an amount of expenditure equal to the expenditure contemplated in paragraph 20 that was incurred by that transferor **[prior to that disposal]** and the executor of the deceased estate of the transferor in respect of that asset;
 - (iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor or the executor of the deceased estate of the transferor; and
 - (iv) used **[the]** that asset in the same manner that it was used by the transferor **[in respect of the period prior to that disposal]** and the executor of the deceased estate of the transferor.”; and
- (b) by the substitution in subparagraph (2) for item (a) of the following item:
- “(a) a deceased person must be treated as having disposed of an asset to his or her surviving spouse, if ownership of that asset **[accrues to that surviving spouse upon the death of that person]** is acquired by that surviving spouse by *ab intestato* or testamentary succession or as a result of a re-distribution agreement between the heirs and legatees of that deceased person in the course of liquidation or distribution of the deceased estate of that deceased person; or”.

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 108 of Act 60 of 2001

58. Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

- “(2) Subject to paragraphs 68, 69, 71 and 72, where a capital gain arises in a trust in a year of assessment during which a trust beneficiary who is a resident has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the whole or the portion of the capital gain so vested—”.

Amendment of paragraph 92 of the Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002 and amended by section 120 of Act 45 of 2003

59. Paragraph 92 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of the following item:

- “(b) increasing that amount by any capital loss determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was taken into account in determining that amount.”.

Amendment of Paragraph 3 of Part I of the Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002, and amended by section 125 of Act 45 of 2003

60. Part 1 of The Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in paragraph 3 for subparagraph (a) of the following subparagraph:
- “(a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income **[falls within the housing subsidy eligibility requirements]** is equal to or less than R3 500 or any greater amount determined by the Minister of Finance by notice in the *Gazette* after consultation with the Minister of Housing **[of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997)]**.”; and
- (b) by the substitution in paragraph 3 for subparagraph (f) of the following subparagraph:

“(f) Granting of loans for purposes of subparagraph (a) or (b), and the provision of security or guarantees in respect of such loans, subject to such conditions as may be prescribed by the Minister by way of regulation.”.

Amendment of Paragraph 4 of Part II of the Ninth Schedule to Act 58 of 1962 5

61. Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 4 of the following paragraph:

- “4. **[The establishment and management of a transfrontier area, involving two or more countries, which—]**
- (a) **[is or will fall under a unified or coordinated system of management without compromising national sovereignty; and]** Engaging in the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere. 10
 - (b) **[has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries within the peace park, and the building of peace and understanding between the nations concerned.]** The care of animals, including the rehabilitation or prevention of the ill-treatment of animals. 15 20
 - (c) The promotion of, and education and training programmes relating to, environmental awareness, greening, clean-up or sustainable development projects.
 - (d) The establishment and management of a transfrontier area, involving two or more countries, which— 25
 - (i) does or will fall under a unified or coordinated system of management without compromising national sovereignty; and
 - (ii) has been established with the explicit purpose of supporting the conservation of biological diversity, job creation, free movement of animals and tourists across the international boundaries of the peace park, and the building of peace and understanding between the nations concerned.”. 30

Amendment of Paragraph 5 of Part II of the Ninth Schedule to Act 58 of 1962, as added by section 130 of Act 45 of 2003

62. Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in paragraph 5 for subparagraph (a) of the following subparagraph: 35

“(a) The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income **[falls within the housing subsidy eligibility requirements]** is equal to or less than R3 500 or any greater amount determined by the Minister of Finance by notice in the Gazette after consultation with the Minister of Housing [of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997)].” 40

Insertion of the Tenth Schedule to Act 58 of 1962

63. (1) The Income Tax Act, 1962, is hereby amended by the addition of the following Schedule: 45

“TENTH SCHEDULE OIL AND GAS ACTIVITIES

Definitions

1. For purposes of this Schedule, unless the context otherwise indicates— 50
- ‘exploration’** means the acquisition, processing and analysis of geological and geophysical data or other related activity for purposes of defining a trap to be tested by drilling together with well drilling, logging and testing

- (including extended well testing) up to and including the well appraisal stage;
- ‘gas’** means any subsoil combustible gas consisting primarily of hydrocarbons, consisting primarily of hydrocarbons, other than hydrocarbons converted from bituminous shales or other stratified deposits of solid hydrocarbons; 5
- ‘oil’** means any subsoil combustible liquid consisting primarily of hydrocarbons, other than hydrocarbons converted from bituminous shales or other stratified deposits of solid hydrocarbons;
- ‘oil and gas company’** means any company— 10
- (a) that—
- (i) holds any oil and gas right;
 - (ii) engages in exploration or production in terms of any oil and gas right; or
 - (iii) engages in refining of gas derived in respect of any oil and gas right held by that company; and 15
- (b) engages in no trade other than any of the activities contemplated in item (a);
- ‘oil and gas income’** means the receipts, accruals or gains derived by an oil and gas company in respect of any oil and gas right, including the leasing or disposal of that right; and 20
- ‘oil and gas right’** means any reconnaissance permit, technical co-operation permit, exploration right, or production right as contemplated in Schedule I of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any right or interest therein; 25
- ‘production’** means the acquisition, processing, re-processing and analysis of geological and geophysical data associated with drilling, and the design, fabrication, construction and installation of facilities for the production of oil and gas or other similar activity, but does not include exploration; and 30
- ‘refining’** means, in relation to oil and gas, the fractional distillation, chemical processing, conversion treatment or any combination thereof but does not include— 30
- (a) any such activity which constitutes the separation of oil and gas condensates;
 - (b) the drying of gas; 35
 - (c) the removal of non-hydrocarbon constituents as a process integral to the production of oil and gas from a well and preliminary to the further refining of such separated condensates, oil, gas or dry gas, as the case may be, at another facility; or
 - (d) production. 40

Rates

- 2.** (1) The rate of tax on taxable income derived from oil or gas income of any oil and gas company that—
- (a) is a resident will not exceed 29 cents on each rand of taxable income; and 45
 - (b) is not a resident and carries on a trade through a branch or agency within the Republic will not exceed 32 cents on each rand of taxable income.
- (2) Notwithstanding subparagraph (1)(b), the rate of tax on taxable income derived from oil and gas income of an oil and gas company that is not a resident and carries on trade through a branch or agency within the Republic will not exceed 29 per cent in respect of any oil and gas income solely derived (directly or indirectly) by virtue of an OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) previously held by that company. 50 55

Secondary tax on Companies

3. (1) The rate of tax will not exceed 5 per cent on the net amount of any dividend declared by an oil and gas company derived from the profits of its oil and gas income.

(2) Notwithstanding subparagraph (1), the rate of tax may not exceed 0 per cent on the net amount of any dividend declared by any oil and gas company derived from the profits of its oil and gas income if all of its oil and gas rights are solely derived (directly or indirectly) by virtue of an OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) previously held by that company.

(3) Paragraphs (1) and (2) will not apply to any oil and gas company engaged in refining.

Foreign currency gains or losses

4. (1) Currency gains or losses of an oil and gas company during any year of assessment (regardless of whether those gains or losses are realised or unrealised) must be determined solely with reference to the currency and translation method used by that company for purposes of financial reporting.

(2) Any amount received by or accrued to, or expenditure incurred by, an oil and gas company in any currency other than that of the Republic must be determined in the currency and in accordance with the translation method used by that oil and gas company for purposes of financial reporting for the relevant year of assessment and any tax in respect of that year must be translated to the currency of the Republic by applying the average exchange rate for that year.

(3) (a) For purposes of this paragraph, an oil and gas company may only change the currency used for financial reporting with the approval of the Commissioner under the terms and conditions that the Commissioner may determine.

(b) For purposes of item (a), the Commissioner may only approve a change in currency if the Commissioner is satisfied that the change was not solely or mainly for the reduction of liability for tax.

Deductions from income derived from oil and gas activities

5. (1) For purposes of determining the taxable income of an oil and gas company during any year of assessment, there will be allowed as deductions from the oil and gas income of that company all expenditure and losses actually incurred (other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right, except as allowed in paragraph 7(3)) in that year in respect of exploration or production.

(2) In addition to any other deductions (as contemplated in subparagraph (1) other than any expenditure or loss actually incurred in respect of the acquisition of any oil and gas right) allowable in terms of this paragraph, for purposes of determining the taxable income of an oil and gas company during any year of assessment, there will be allowed as deductions from the oil or gas income of that company derived in that year—

(a) 100 per cent of all expenditure of a capital nature actually incurred in that year in respect of exploration; and

(b) 50 per cent of all expenditure of a capital nature actually incurred in that year in respect of production.

(3) For purposes of determining the taxable income of an oil and gas company during any year of assessment, any assessed losses (as defined in section 20) in respect of exploration or production may only be set-off against the oil and gas income, and income derived from refining of gas of that company to the extent those assessed losses do not exceed that income.

(4) To the extent any assessed losses remain after the set-off contemplated in subparagraph (3), an amount equal to 10 per cent of those

remaining assessed losses may be set-off against any other income derived by that company.

(5) To the extent any assessed loss remains after the set offs contemplated in subparagraphs (3) and (4), those losses will be carried forward to the succeeding year of assessment.

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Thin capitalisation

6. (1) For purposes of determining the taxable income of an oil and gas company during any year of assessment, the Commissioner may not disallow a deduction of expenditure in respect of loans, advances and debts (or of any other financial assistance) on the grounds that those loans, advances and debts are excessive in relation to the fixed capital of that company (as determined on the last day of such year of assessment of that company, unless—

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(a) an interest bearing loan, advance or debt was owed during that year by the oil and gas company to any person who is a connected person in relation to that company; and

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(b) all interest bearing loans, debts and advances contemplated in item (a) in the aggregate exceed an amount equal to three times the total fixed capital (being share capital, share premium and accumulated net realised and unrealised profits) of that company.

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(2) If the interest bearing loans, debts and advances are excessive as contemplated in subparagraph (1) for a temporary duration, the Commissioner may, on good cause shown, deem those loans, debts and advances as not being excessive during that period.

(3) For the purposes of this paragraph, a loan, debt or advance will only be interest bearing during a year of assessment if interest is incurred during that year of assessment.

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Disposal of oil and gas right

7. (1) If an oil or gas company disposes of any oil and gas right to another company, that oil and gas company may elect in the form and manner determined by the Commissioner (*in lieu* of any other provision of this Act) that either rollover treatment as contemplated in subparagraph (2) or participation treatment as contemplated in subparagraph (3) applies in respect of that right.

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(2) If an oil or gas company disposes of any oil and gas right to another oil and gas company pursuant to an election for rollover treatment as contemplated in subparagraph (1), the market value of which is equal to or exceeds—

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(a) in the case that right is held as a capital asset, the base cost of that right on the date of that disposal; or

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(b) in the case that right is held as trading stock, the amount taken into account in respect of that right in terms of section 11(a) or 22 (1) or (2),

that company is deemed to have disposed of that right for an amount equal to the amount contemplated in items (a) or (b), as the case may be, and that other company is deemed to have acquired that right—

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(i) where that right is so disposed of as a capital asset, for a cost equal to any expenditure in respect of that right incurred by that company that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that company of such expenditure, which cost must, where that right is acquired as—

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(A) a capital asset, be treated as an expenditure actually incurred and paid by that company in respect of that right for the purposes of paragraph 20 of the Eighth Schedule; and

(B) trading stock, be treated as the amount to be taken into account by that company in respect of that right for the purposes of section 11(a) or 22(1) or (2); or

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(ii) where that right is so disposed of as trading stock and that right is acquired as trading stock, for a cost equal to the amount referred to in

item (b), which cost must be treated as the amount to be taken into account by that company in respect of that right for purposes of section 11(a) or 22(1) or (2).

(3) (a) If an oil or gas company disposes of any oil and gas right to another company pursuant to an election for participation treatment as contemplated in subparagraph (1) and—

- (i) that right is held as a capital asset; and
- (ii) the market value of that right exceeds the base cost of that right on the date of that disposal,

any gain derived by that company in respect of the amount contemplated in subitem (ii) is deemed to be an amount of gross income, and that other company that acquired that right may deduct from its oil and gas income as contemplated in paragraph 5(1) (but not including 5(2)) an amount of gross income equal to the gross income deemed received by the company that disposed of that right.

(b) If an oil or gas company disposes of any oil and gas right to another oil and gas company pursuant to an election for participation treatment as contemplated in subparagraph (1) and—

- (i) that right is held as trading stock; and
- (ii) the market value of that right exceeds the amount taken into account in respect of that right in terms of section 11(a) or 22,

that other company that acquired that right may deduct from its oil and gas income as contemplated in paragraph 5(1) (but not including 5(2)) an amount of gross income equal to the gross income deemed received by the company that disposed of that right less the applicable deduction allowable as contemplated in section 11(a) or 22, as the case may be, in respect of that right.

Fiscal stability

8. (1) The Minister, after consultation with the Minister of Minerals and Energy, may enter into agreements that contractually bind the State with any oil and gas company guaranteeing that the provisions of this Schedule as at the date that agreement was entered into will continue to apply for the duration of that company's oil and gas right.

(2) For purposes of this paragraph, as of the date that any oil and gas company enters into an agreement as contemplated in subparagraph (1)—

- (a) any exploration right or renewal thereof (or any right or interest therein); or
- (b) the initial production right converted from any exploration right (or any right or interest therein) contemplated in item (a),

in respect of any oil and gas right of that company will be deemed to be one and the same right in the hands of that company.

(3) Any oil and gas company that has entered into an agreement as contemplated in this paragraph may at any time unilaterally rescind that agreement, thereby rendering that agreement null and void as of the date of that rescission.”.

(2) Subsection (1) shall be deemed to have come into operation on 2 November 2006 and shall apply in respect of any year of assessment commencing on or after that date.

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, section 67 of Act 32 of 2004 and section 12 of Act 9 of 2005

64. (1) Section 44 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for subsection (4) of the following subsection:
 - “(4) (a) The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or

other document was issued on loading of such goods onto the ship, aircraft or vehicle by means of which they were imported stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed **[and placed in a transit shed appointed or prescribed under section 6(1)]**. 5

(b) Any person who receives any goods contemplated in paragraph (a) shall be liable for the duty on those goods and such liability shall cease as provided for in this section.

(c) The Commissioner may make rules in respect of any matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this section.”; 10

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

“(4A) The liability for duty on goods in terms of subsection (4) shall cease, in the case of— 15

(a) the master—

- (i) upon receipt of the goods by a—
 - (aa) container terminal operator; 20
 - (bb) combination terminal operator;
 - (cc) transit shed operator;
 - (dd) bulk goods terminal operator;
 - (ee) road vehicle terminal operator;
 - (ff) container depot operator; or
 - (gg) degrouping operator; or 25

- (ii) where, if determined by rule as contemplated in section 11, after due entry and release of the goods—
 - (aa) if entered for home consumption, upon receipt thereof by the importer or the importer’s agent;
 - (bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee of such warehouse; 30
 - (cc) upon receipt by the person who has entered the goods for removal in bond in terms of section 18; or
 - (dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or 35

(iii) where any goods have not been dealt with as contemplated in subparagraphs (i) and (ii), on delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11; 40

(b) the pilot—

- (i) upon receipt of the goods by—
 - (aa) a transit shed operator; or
 - (bb) a degrouping operator; or 45

- (ii) where, if determined by rule as contemplated in section 11, after due entry and release thereof—
 - (aa) if entered for home consumption, upon receipt of the goods by the importer or the importer’s agent;
 - (bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee of such warehouse; 50
 - (cc) upon receipt by the person who has entered the goods for removal in bond in terms of section 18; or
 - (dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or 55

(iii) where any goods have not been dealt with as contemplated in subparagraphs (i) and (ii), on delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11; 60

(c) any other carrier—

- (i) upon receipt of the goods by any person contemplated in section 11; or
 - (ii) where, if determined by rule as contemplated in section 11, after due entry and release of the goods—
 - (aa) if entered for home consumption, upon receipt thereof by the importer or the importer's agent;
 - (bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee;
 - (cc) upon receipt by the person who has entered the goods for removal in bond in terms of section 18;
 - (dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or
 - (iii) where any goods have not been dealt with as contemplated in subparagraphs (i) and (ii), on delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11;”;
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) The liability for duty on goods received from the master, pilot or other carrier as contemplated in subsection (4A) or any other person contemplated in this section shall cease in the case of—
- (a) the container terminal operator, combination terminal operator, bulk goods terminal operator or road vehicle terminal operator—
 - (i) after due entry and release thereof—
 - (aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;
 - (bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee of such warehouse;
 - (cc) upon receipt by the person who has entered the goods for removal in bond in terms of section 18;
 - (dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or
 - (ii) if containerised, upon receipt by the container operator or container depot operator;
 - (iii) if breakbulk, upon receipt by the transit shed operator;
 - (iv) upon receipt by any other container terminal operator or combination terminal operator, bulk goods terminal operator or road vehicle terminal operator on removal of the goods in accordance with the procedures prescribed by rule; or
 - (v) where any goods have not been dealt with as contemplated in subparagraphs (i) to (iv), on delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11;
 - (b) the transit shed operator—
 - (i) after due entry and release thereof—
 - (aa) if entered for home consumption, upon receipt of the goods by the importer or the importer's agent;
 - (bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee of such warehouse;
 - (cc) upon receipt by the person who has entered the goods for removal in bond in terms of section 18;
 - (dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or
 - (ii) in the case of sea cargo, upon receipt thereof by a combination terminal operator;
 - (iii) in the case of air cargo, upon receipt thereof by a degrouping operator;

- (iv) upon receipt by any other transit shed operator on removal of the goods in accordance with procedures as may be prescribed by rule; or
- (v) where any goods have not been dealt with as contemplated in subparagraphs (i) to (iv) upon delivery thereof to the State warehouse, or any other place with the permission of the Commissioner as contemplated in section 11.”;
- (d) by the substitution for subsection (5A) of the following subsection:
- “(5A) (a) The container operator shall be liable for the duty on all containerised goods received as contemplated in subsection (5)(a)(ii).
 (b) The liability of the container operator for duty on such goods shall cease—
- (i) after due entry and release thereof—
- (aa) if entered for home consumption, upon receipt of the goods by the importer or the importer’s agent;
- (bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee of such warehouse;
- (cc) upon receipt by the person who has entered the goods for removal in bond in terms of section 18; or
- (dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or
- (ii) upon receipt by a container terminal operator or a container depot operator or any other person, at any other place specified by rule, where the container operator removes any container in bond as contemplated in section 18(1)(d); or
- (iii) in respect of goods containerized in—
- (aa) L.C.L. containers; and
- (bb) any other containers, delivered to a container operator as contemplated in subsection (5)(a)(ii) and specified in a list to be compiled by the container operator concerned, upon delivery thereof to a container depot operator; or
- (iv) where any goods have not been dealt with as contemplated in subparagraphs (i) to (iii), upon delivery thereof to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11.”;
- (e) by the substitution for subsection (5B) of the following subsection:
- “(5B) (a) The container depot operator shall be liable for the duty on all containerised goods received as contemplated in this section.
 (b) The liability for duty of the container depot operator shall cease—
- (i) in respect of goods contained in L.C.L. containers and the other containers referred to in subsection (5A)(b)(iii)(bb) and any other containers received as contemplated in this section after due entry and release thereof—
- (aa) if entered for home consumption, upon receipt of the goods by the importer or the importer’s agent;
- (bb) if entered for warehousing in a customs and excise warehouse, upon receipt by the licensee of such warehouse;
- (cc) upon receipt by the person who has entered the goods for removal in bond in terms of section 18; or
- (dd) upon receipt by any other person in circumstances and in accordance with procedures as may be prescribed by rule; or
- (ii) upon receipt by any other container depot operator on removal of the goods in accordance with the procedures prescribed by rule; or
- (iii) where any goods have not been dealt with as contemplated in subparagraphs (i) to (ii) upon delivery to the State warehouse or any other place with the permission of the Commissioner as contemplated in section 11.”;
- (f) by the substitution in subsection (5C)(a) for subparagraph (ii) of the following subparagraph:
- “(ii) degrouping operator from the transit shed operator [(as defined by rule)] where the degrouping operator takes delivery from the transit shed operator at the transit shed;”;

(g) by the insertion after subsection (5C) of the following subsection:

“(5D) (a) Any person receiving any goods as contemplated in this section, shall issue a receipt to the person delivering the goods in respect of any goods received.

(b) Any outturn report or any discrepant report duly completed in accordance with section 8 and its rules shall, in respect of the goods concerned, be regarded to be a correct report of goods landed or received, as the case may be, in bulk, in a container, consolidated package or other package.

(c) Subject to compliance with any procedure prescribed by rule in respect of any goods or means of transport, the liability for duty of the master, pilot or other carrier, container operator, transit shed operator or any other person contemplated in section 11 on any imported goods not consigned to a place in the Republic which are landed in the Republic, shall cease when it is proved that the goods have been duly taken out of the common customs area.”; and

(h) by the substitution for subsection (6) of the following subsection:

“(6) In all cases where the master, pilot or other carrier is not liable for the duty on any imported goods or where the liability of the said master, pilot or other carrier has ceased in respect of such goods in terms of this section, liability for duty thereon shall, subject to the provisions of Chapter VII, rest—

(a) on the persons specified in subsections (4A), (5), (5A), (5B) or (5C); and

(b) in any other case, on the importer or the owner of such goods or any person who assumes such liability for any purpose under the provisions of this Act, subject to the approval of the Commissioner and such conditions as he may determine.”.

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

Substitution of heading to Chapter VI of Act 91 of 1964

65. The following heading is hereby substituted for the heading to Chapter VI of the Customs and Excise Act, 1964:

“ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD DUTIES AND OTHER MEASURES”.

Amendment of section 55 of Act 91 of 1964, as amended by section 12 of Act 95 of Act 1965, section 6 of Act 103 of 1972, section 15 of Act 112 of 1977, section 8 of Act 61 of 1992, section 3 of Act 16 of 1997 and section 69 of Act 32 of 2004

66. Section 55 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the heading of the following heading:

“General provisions regarding anti-dumping, [and] countervailing and safeguard duties and measures”;

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

“(a) The imposition of any anti-dumping duty in the case of dumping as defined in the International Trade Administration Act, 2002 (Act No. 71 of 2002), a countervailing duty in the case of subsidized export as so defined or a safeguard duty or quota in the case of disruptive competition as so defined and the rate at which or the circumstances in which such duty or quota is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Trade and Industry under the provisions of the International Trade Administration Act, 2002.”; and

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

“(4) An anti-dumping, countervailing or safeguard duty or quota imposed under the provisions of this Chapter shall not apply to any goods entered under the provisions of any item specified in Schedule No. 3 or 4 unless such item is specified in Schedule No. 2 in respect of such goods.”.

Amendment of section 56 of Act 91 of 1964, as substituted by section 9 of Act 61 of 1992 and amended by section 6 of Act 19 of 1994

67. Section 56 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Minister may, in accordance with any request by the Minister of Trade and Industry [**and for Economic Co-ordination**], from time to time by notice in the *Gazette*—
- (a) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or
- (b) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,
- any anti-dumping duty imposed under subsection (1).”

Amendment of section 56A of Act 91 of 1964, as inserted by section 10 of Act 61 of 1992 and amended by section 7 of Act 19 of 1994

68. Section 56A of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Minister may, in accordance with any request by the Minister of Trade and Industry [**and for Economic Co-ordination**] from time to time by notice in the *Gazette*—
- (a) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or
- (b) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,
- any countervailing duty imposed under subsection (1).”

Amendment of section 57 of Act 91 of 1964, as substituted by section 17 of Act 112 of 1977 and amended by section 11 of Act 61 of 1992 and section 8 of Act 19 of 1994

69. Section 57 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Imposition of safeguard [duties] measures”;
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) The Minister may from time to time by notice in the *Gazette* amend Schedule No. 2 to impose a safeguard duty or quota in accordance with the provisions of section 55(2).”; and
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) The Minister may, in accordance with any request by the Minister of Trade and Industry [**and for Economic Co-ordination**] from time to time by notice in the *Gazette*—
- (a) withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice; or
- (b) otherwise amend, from the date of such amendment or any later date to such extent as may be specified in the notice,
- any safeguard duty or quota imposed under subsection (1).”

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004 and section 92 of Act 31 of 2005

70. Section 75 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (1A)(a) for the words following subparagraph (iii) of the following words:

- “shall be granted in accordance with the provisions of this section and of item **[540.02 of Schedule No. 5 or item 640.03]** 670.04 of Schedule No. 6 to the extent stated in those items;”;
- (b) by the substitution in subsection (4A) for paragraph (c) of the following paragraph: 5
 “(c) Any seller of such fuel shall furnish such user with an original invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed in the notes to **[the] item [640.03]** 670.04.”;
- (c) by the substitution in subsection (4A) for paragraph (d) of the following paragraph: 10
 “(d) Any user shall complete and keep such books, accounts and documents and furnish to the Commissioner at such times such particulars of the purchase, use or storage of such fuel or any other particulars as may be prescribed in the notes to item **[640.03]** 670.04.”; 15
- (d) by the substitution in subsection (4A)(f)(ii) for item (bb) of the following item:
 “(bb) fails to complete, keep or furnish such accounts, books or documents or keep such invoice, as may be prescribed in the notes to item **[640.03]** 670.04; or”; 20
- (e) by the substitution in subsection (4A) for paragraph (g) of the following paragraph:
 “(g) For the purposes of the administration of the refunds of levies on distillate fuel as provided in this section and **[item 540.02 of Schedule No. 5 or]** item **[640.03]** 670.04 of Schedule No. 6 the Commissioner may, subject to the provisions of section 3(2), delegate by rule any of the Commissioner’s powers, duties or functions under this Act to any officer, including any officer employed in administering the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).”; 25
- (f) by the substitution in subsection (4A)(h) for subparagraph (i) of the following subparagraph: 30
 “(i) Any person to whom a refund of levies has been granted in accordance with the provisions of this section and of **[item 540.02 of Schedule No. 5 or item 640.03]** item 670.04 of Schedule No. 6 who falsely applied for such refund or who uses or disposes of such fuel contrary to such provisions, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any levies refunded, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.”; 35
- (g) by the substitution for subsection (7A) of the following subsection:
 “(7A) Any person to whom a refund of levies has been granted on any distillate fuel in terms of the provisions of **[item 540.02 of Schedule No. 5 or item 640.03]** item 670.04 of Schedule No. 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for registration shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof, failing which such amount or such portion shall be recoverable as if it were a duty payable under this Act.”; 40
- (h) by the substitution in subsection (15) for paragraph (b) of the following paragraph: 45
 “(b) An amendment made under paragraph (a) which repeals any existing provision in Schedule No. 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods[, **excluding distillate fuels referred to in item 540.02 of Schedule No. 5,**] which were imported prior to the date of the relevant notice in the *Gazette*, and an amendment made under the said paragraph which embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods, shall 50
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not, except in so far as the Commissioner so directs and subject to such conditions as he may determine, apply in respect of goods which were imported prior to the date of the relevant notice in the *Gazette*.”;

- (i) by the deletion in subsection (18) of paragraph (c); and
- (j) by the substitution in subsection (18)(e) for subparagraph (ii) of the following subparagraph: 5
 “(ii) in the case of distillate fuel, unmarked illuminating kerosene or unmarked specified aliphatic hydrocarbon solvents manufactured in the Republic, 0,15 per cent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse.”. 10

Amendment of section 76A of Act 91 of 1964, as inserted by section 25 of Act 84 of 1987 and amended by section 9 of Act 69 of 1988

71. Section 76A of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section [77(1)(a)] 77(a).” 15

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998, section 6 of Act 32 of 1999, section 63 of Act 30 of 2000, section 111 of Act 74 of 2002, section 35 of Act 16 of 2004 and section 93 of Act 31 of 2005 20

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

- “(d) any such instalment paid shall be utilised by the Commissioner to discharge any penalty, [fine,] interest, forfeiture, duty and expenses incurred by or charges due to the Commissioner, in that order;” 25

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, section 34 of Act 34 of 1997, section 71 of Act 53 of 1999, section 140 of Act 60 of 2001, section 112 of Act 74 of 2002 and section 94 of Act 31 of 2005 and section 172 of Act 34 of 2005 30

73. Section 114 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph: 35
 “(i) Any amount of any duty, interest, [fine,] penalty or forfeiture incurred under this Act and which is payable in terms of this Act, shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.”;
- (b) by the substitution in subsection (1)(a)(iii) for item (aa) of the following item: 40
 “(aa) The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subparagraph (ii), and such statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under the subsection in respect of any duty, interest, [fine,] penalty or forfeiture referred to in the withdrawn statement.”; and 45
- (c) by the substitution in subsection (1)(b)(iv) for item (aa) of the following item:
 “(aa) any penalty, [fine,] interest, forfeiture, duty and expenses incurred by or charges due to the Commissioner; and”.

Amendment of section 4 of Act 77 of 1968, as amended by section 17 of Act 103 of 1969, section 5 of Act 72 of 1970, section 6 of Act 66 of 1973, section 8 of Act 88 of 1974, section 4 of Act 95 of 1978, section 7 of Act 99 of 1981, section 4 of Act 87 of 1982, section 4 of Act 118 of 1984, section 10 of Act 81 of 1985, section 18 of Act 87 of 1988, section 4 of Act 69 of 1989, section 5 of Act 136 of 1992, section 13 of Act 97 of 1993, section 78 of Act 30 of 1998, section 67 of Act 30 of 2000 and section 54 of Act 30 of 2002

74. Section 4 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph: 10
- “(i) any **[rural council, municipal council, town council, village council, town board, local board, village management board, health committee or district council]** ‘municipality’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); **[or]**”;
- (b) by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the following subparagraph: 15
- “(iii) **[the Rand Water Board, the Far West Rand Dolomitic Water Association formed on 6 July 1964, or any regional water services corporation constituted under section 7 of the Water Services Ordinance, 1963 (Ordinance No. 27 of 1963), of Natal, or any irrigation board established under Chapter VI, any water board established under Chapter VII or any body established under Chapter VIIA of the Water Act, 1956 (Act No. 54 of 1956)]** any ‘water services provider’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962); **[or]**”;
- (c) by the substitution in subsection (1) for subparagraph (vi) of paragraph (b) of the following subparagraph: 25
- “(vi) the Natal Parks, Game and Fish Preservation Board constituted under the Nature Conservation Ordinance, 1974 (Ordinance No. 15 of 1974), of Natal, or the National Parks Board of Trustees established in terms of the National Parks Act, 1976 (Act No. 57 of 1976); **[or]**”;
- (d) by the substitution in subsection (1) for subparagraph (vii) of paragraph (b) of the following subparagraph: 30
- “(vii) the Development Bank of Southern Africa established on 30 June 1983; **[or]**”;
- (e) by the deletion in subsection (1) of subparagraphs (viii) and (ix) of paragraph (b);
- (f) by the addition to subsection (1) after subparagraph (x) of paragraph (b) of the following subparagraphs: 40
- “(xi) any ‘regional electricity distributor’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), until 1 January 2014 or a later date that may be determined by the Minister by Notice in the *Gazette*; or
- (xii) any ‘traditional council’ as contemplated in the Communal Land Rights Act, 2004 (Act No. 11 of 2004), until a date that may be determined by the Minister by Notice in the *Gazette*.”; and
- (g) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 50
- “(h) any instrument transferred by any public benefit organisation contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section 30(3)[, which is exempt from tax in terms of section 10(1)(cN)] of the Income Tax Act, 1962, to any other entity which is controlled by such public benefit organisation **[in order to comply with the provisions of the proviso to section 30(3) of that Act]**.”. 55

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, 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, section 91 of Act 32 of 2004, section 18 of Act 9 of 2005 and section 100 of Act 31 of 2005, section 39 of Act 9 of 2006

75. Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

- (a) by the substitution in item 15 for paragraph (i) of the following paragraph:
 - “(i) a **[local authority]** ‘municipality’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”;
- (b) by the substitution in item 15 for paragraph (ii) of the following paragraph:
 - “(ii) **[the Rand Water Board]** a ‘water services provider’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”;
- (c) by the deletion in item 15 of paragraphs (viii), (ix) and (xiv);
- (d) by the deletion in item 15 of the word “and” in paragraph (xvi);
- (e) by the substitution in item 15 for paragraph (xvii) of the following paragraph:
 - “(xvii) the National Housing Finance Corporation Limited[.];”;
- (f) by the addition to item 15 of the following paragraphs:
 - “(xviii) a ‘regional electricity distributor’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), until 1 January 2014 or a later date that may be determined by the Minister by Notice in the *Gazette*; and
 - (xix) any ‘traditional council’ as contemplated in the Communal Land Rights Act, 2004 (Act No. 11 of 2004), until a date that may be determined by the Minister by Notice in the *Gazette*.”.

Repeal of section 9 of Act 11 of 1977, as amended by section 1 of Act 49 of 1996

76. Section 9 of the Finance and Financial Adjustments Act Consolidation Act, 1977 (Act No. 11 of 1977), is hereby repealed.

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 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005 and section 40 of Act 9 of 2006

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

- (a) by the deletion of the word “or” at the end of paragraph (iv) in the definition of “**designated entity**” and by the insertion of the word “or” at the end of paragraph (v) in the definition of “**designated entity**”;
- (b) by the insertion of the following paragraph in the definition of “**designated entity**” after paragraph (v):
 - “(vi) which has powers similar to those of any water board listed in Part B of Schedule 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), which would have complied with the definition of ‘local authority’ in section 1 prior to the deletion of that definition on 1 July 2006;”;

- (c) by the substitution for the definition of “**foreign donor funded project**” of the following definition:
- “**foreign donor funded project**’ means a project established as a result of an international donor funding agreement to supply goods or services to beneficiaries, to which the Government of the Republic is a party, **[to supply goods or services to beneficiaries]** and which—
- (i) is binding on the Republic in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996; and
- (ii) provides that the international donor funding must not be subject to tax;”;
- (d) by the substitution for the definition of “**municipality**” of the following definition:
- “**municipality**’ means a municipality as defined in section 1 of the Income Tax Act;”;
- (e) by the substitution for the words in the definition of “**welfare organisation**” preceding paragraph (a) of the following words:
- “**welfare organisation**’ means any public benefit organisation **[which is exempt from income tax in terms of section 10(1)(cN)]** contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) of the Income Tax Act that has been approved by the Commissioner in terms of section 30(3) of that Act, if it carries on or intends to carry on any welfare activity determined by the Minister for purposes of this Act, relating to those activities that fall under the headings—”;

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, section 87 of Act 30 of 1998, section 82 of Act 53 of 1999, section 149 of Act 60 of 2001, section 115 of Act 74 of 2002, section 44 of Act 16 of 2004, section 93 of Act 32 of 2004 and section 41 of Act 9 of 2006

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

- “(vi) **‘participatory security’** means a participatory interest as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), but does not include an equity security, a debt security, money or a cheque;”.

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, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005 and section 42 of Act 9 of 2006

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

- (a) by the substitution for subsection (24) of the following subsection:
- “(24) For the purposes of this Act, a vendor, being a customs controlled area enterprise or an IDZ operator, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal, or within a period approved in writing by the Controller.”; and

(b) the addition of the following subsection after subsection (26):

“(27) For the purposes of this Act, where any amount received in respect of a taxable supply of goods or services exceeds the consideration charged for that supply, and such excess amount has not been refunded within four months of receipt thereof, that excess amount shall be deemed to be consideration for a supply of services performed by the vendor in the course or furtherance of that vendor’s enterprise on the last day of the tax period during which that four month period ends.”.

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 13 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, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001, section 168 of Act 45 of 2003, section 97 of Act 32 of 2004, section 104 of Act 31 of 2005 and section 43 of Act 9 of 2006

80. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection after subsection (25):

“(26) Where a service is deemed to be supplied under section 8(27), the consideration in money for the supply shall be deemed to be the excess amount contemplated in that section.”.

Amendment to 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, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005 and section 44 of Act 9 of 2006

81. Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or by a customs controlled area enterprise or an IDZ operator in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to a person located in a customs controlled area; [or]”;

(b) by the substitution in subsection (1) for paragraph (m) of the following paragraph:

“(m) a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement to a [registered vendor in a customs controlled area] customs controlled area enterprise or an IDZ operator and those goods are physically delivered to that customs controlled area enterprise or IDZ operator in a customs controlled area either—
 (i) **[physically delivered]** by the supplier **[to the recipient]**; or
 (ii) **[physically delivered]** by a VAT registered cartage contractor, **[engaged by the supplier,]** whose main activity is that of transporting goods and who is engaged by the supplier:
Provided that this subsection shall not apply where the cartage contractor is not liable to the supplier for delivery of] to deliver the goods and that supplier is **[not]** liable for the full cost relating to that delivery;”;

(c) by the insertion in subsection (1) after paragraph (m) of the following paragraph:

“(mA) a vendor supplies fixed property situated in a customs controlled area to a customs controlled area enterprise or an IDZ operator under any agreement of sale or letting or any other agreement

- under which the use or permission to use such fixed property is granted;”;
- (d) by the addition in subsection (1) of the word “or” at the end of paragraph (q);
- (e) by the addition to subsection (1) of the following paragraph: 5
“(r) compensation is paid by a public authority in terms of section 19 of the Animal Diseases Act, 1984 (Act No. 35 of 1984) for the supply of a ‘controlled animal or thing’ as defined in that Act to that public authority;”;
- (f) by the substitution in subsection (2) for paragraph (k) of the following paragraph: 10
“(k) the services are physically rendered elsewhere than in the Republic or to a [registered vendor] customs controlled area enterprise or an IDZ operator in a customs controlled area; or”; and
- (g) by the substitution in subsection (2) for paragraph (q) of the following paragraph: 15
“(q) the services are deemed to be supplied in terms of section 8(5B) to the extent that the Minister after consultation with the Minister of Foreign Affairs announces that that funding is zero-rated by notice in the Gazette;”.

Amendment of section 12 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999, section 69 of Act 19 of 2001, section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004 and section 45 of Act 9 of 2006 20

- 82.** Section 12 of the Value-added Tax Act, 1991, is hereby amended— 25
- (a) by the substitution in paragraph (h)(i)(cc) for the words preceding subitem (A) of the following words: 25
“(cc) by [an institution in the Republic which is exempt from income tax in terms of section 10(1)(cN)] any public benefit organisation as contemplated in paragraph (a) of the definition of ‘public benefit organisation’ contained in section 30(1) of the Income Tax Act that has been approved by the Commissioner in terms of section 30(3) of that Act and which has been formed for [the]—”;
- (b) by the substitution in paragraph (h)(i)(cc) for subitems (A) and (B) of the following subitems, respectively: 35
“(A)[promotion of] adult basic education and training including literacy and numeracy education, registered under the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), vocational training or technical education;
(B) [promotion of the] education and training of religious or social workers;”; 40
- (c) by the substitution in paragraph (h)(i)(cc) for subitem (E) of the following subitem: 40
“(E) provision of bridging courses to enable indigent persons to enter a higher education institution as envisaged in subparagraph (bb); [or]”; and 45
- (d) by the addition in paragraph (h) of the word “or” at the end of subparagraph (ii).

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, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005 and section 47 of Act 9 of 2006 50

- 83.** (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended— 55
- (a) by the substitution in subsection (2) for the second proviso of the following proviso:

- “: Provided further that no deduction of input tax in relation to that supply or importation shall be made in respect of any tax period which ends more than five years after the end of the tax period during which—
- (i) the tax invoice for that supply should have been issued as contemplated in section 20(1);
 - (ii) goods were entered for home consumption in terms of the Customs and Excise Act;
 - (iii) second-hand goods were acquired or goods as contemplated in section 8(10) were repossessed;
 - (iv) the agent should have notified the principal as contemplated in section 54(3); or
 - (v) in any other case, the vendor for the first time became entitled to such deduction and for which a tax invoice is not required for the claiming of such deduction.”;
- (b) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
- “(d) an amount equal to the tax fraction of any amount paid during the tax period by the supplier of the services contemplated in section 8(13) as a prize or winnings to the recipient of such services: Provided that where the prize or winnings awarded constitutes either goods or services, **[input tax]** the deduction must be limited to the input tax [incurred] on the initial cost of acquiring those goods or services;”;
- (c) by the addition to subsection (3) of the following paragraph after paragraph (l):
- “(m) an amount equal to the tax fraction initially applied to any excess amount contemplated in section 8(27) which is refunded by the vendor during the tax period.”; and
- (d) by the substitution in subsection (3) for the first proviso of the following proviso:
- “: Provided that where any vendor is entitled under the preceding provisions of this subsection to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to a later tax period which ends no later than five years after the end of the tax period during which—
- (i) the tax invoice for that supply should have been issued as contemplated in section 20(1);
 - (ii) goods were entered for home consumption in terms of the Customs and Excise Act;
 - (iii) second-hand goods were acquired or goods as contemplated in section 8(10) were repossessed;
 - (iv) the agent should have notified the principal as contemplated in section 54(3); or
 - (v) in any other case, the vendor for the first time became entitled to such deduction and for which a tax invoice is not required for the claiming of such deduction.”;

and to the extent that it has not previously been deducted by the vendor under this subsection.”.

(2) Subsection (1)(b) shall be deemed to have come into operation on 1 February 2006.

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, section 92 of Act 30 of 1998, section 88 of Act 53 of 1999, section 173 of Act 45 of 2003, section 102 of Act 32 of 2004, section 108 of Act 31 of 2005 and section 48 of Act 9 of 2006

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

- (a) by the substitution in subsection (2)(a)(i)(aa) for the words preceding subitem (A) of the following words:
- “continuously or regularly supplies entertainment to clients or customers (other than in the circumstances contemplated in **[subparagraph]** item

- (bb)) for a consideration to the extent that such taxable supplies of entertainment are made for a charge which—”;
- (b) by the substitution in subsection (2)(a) for subparagraph (ii) of the following subparagraph:
- “(ii) such goods or services are acquired by the vendor for the consumption or enjoyment by that vendor (including, where the vendor is a partnership, a member of such partnership), [or] an employee, [or] office holder of such vendor, or a self-employed natural person in respect of a meal, refreshment or accommodation, [personal subsistence] in respect of any night that such vendor or member is by reason of the vendor’s enterprise or, in the case of such employee, [or] office holder or self-employed natural person, he or she is by reason of the duties of his or her employment, [or] office or contractual relationship, obliged to spend away from his or her usual place of residence and[, in respect of an absence on or after 15 July 1992,] from his or her usual working-place. For the purposes of this section, the term ‘self-employed natural person’ shall mean a person to whom an amount is paid or is payable in the course of any trade carried on by him or her independently of the person by whom such amount is paid or payable and of the person to whom the services have been or are to be rendered, as contemplated in the proviso to paragraph (ii) of the exclusions to the definition of ‘remuneration’ in paragraph 1 of the Fourth Schedule to the Income Tax Act;”;
- (c) by the insertion after subsection (2) of the following subsection:
- “(2A) Subsection (2) shall not apply to such goods or services that are applied in the course of furtherance of a foreign donor funded project to the extent that the Minister announces that those funding are zero-rated in terms of section 11(2)(g) by notice in the *Gazette*.”.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005 and section 49 of Act 9 of 2006

85. Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (10) of the following subsection:

- “(10) Where—
- (a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k) to a [registered] vendor, [who] that is a customs controlled area enterprise or an IDZ operator; or
- (b) goods have been imported into the Republic by a [registered] vendor, being [who is] a customs controlled area enterprise or an IDZ operator [for use, consumption or supply in that area] and those goods are exempt from tax in terms of section 13(3),
- and where a deduction of input tax would have been denied in terms of section 17(2), and to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is a customs controlled area enterprise or an IDZ operator, those goods or services shall be deemed to be supplied by the vendor concerned in the same tax period in which they were so acquired, in accordance with the formula:
- $$A \times B$$
- in which formula—
- ‘A’ represents the rate of tax levied in terms of section 7(1); and
- ‘B’ represents—
- [(a)](i) the cost to the vendor of the acquisition of those goods or services which were supplied to him or her in terms of sections 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k); or
- [(b)](ii) the value to be placed on the importation of goods into the Republic as determined in terms of section 13(2).”.

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996, section 36 of Act 27 of 1997, section 95 of Act 30 of 1998, section 177 of Act 45 of 2003 and section 110 of Act 31 of 2005

86. Section 22 of the Value-Added Tax Act, 1991, is hereby amended— 5
- (a) by the substitution in subsection (3) for the words following paragraph (b), but preceding the proviso of the following words: 10
- “an amount equal to the tax fraction, as applicable at the time of such deduction, of that portion of the consideration which has not been paid shall be deemed to be tax charged in respect of a taxable supply made in the **[next following]** tax period following **[after]** the expiry of the period of 12 months.”;
- (b) by the deletion in subsection (3) of the word “or” at the end of subparagraph (i) of the proviso;
- (c) by the substitution in subsection (3) for subparagraph (ii) of the proviso of the following subparagraph: 15
- “(ii) where—
- (aa) the estate of a vendor is sequestrated, whether voluntarily or compulsorily;
- (bb) the vendor is declared insolvent; **[or]** 20
- (cc) the vendor has entered into a compromise or an arrangement in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973), or a similar arrangement with creditors; or
- (dd) the vendor ceases to be a vendor as contemplated in section 8(2), 25
- within 12 months after the expiry of the tax period within which that deduction was made, not paid the full consideration, the vendor must account for output tax in terms of this section equal to that portion of the consideration which has not been paid—
- (AA) at the time of sequestration, declaration of insolvency or the 30
- date on which the compromise or the arrangement or similar arrangement was entered into; or
- (BB) immediately before the vendor ceased to be a vendor as contemplated in section 8(2); or”; and
- (d) by the insertion in subsection (3) after subparagraph (ii) of the proviso of the following subparagraph: 35
- “(iii) subparagraph (ii) shall not be applicable where a vendor has already accounted for tax payable in accordance with this subsection.”.

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000, section 180 of Act 45 of 2003, section 41 of Act 34 of 2004 and section 38 of Act 32 of 2005 40

87. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words following paragraph (f) of the following words: 45
- “the Commissioner may, notwithstanding the provisions of section 32(5) of this Act and section 83(18) and 83A(12) of the Income Tax Act, make an assessment of the amount of tax payable by the person liable for the payment of such amount of tax, and the amount of tax so assessed shall be paid by the person concerned to the Commissioner.”.

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, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999 and section 168 of Act 60 of 2001 50

88. Section 44 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph: 55
- “(ii) where the amount that would be so refunded to the vendor is determined to be **[R25 or]** less than R100, or less than such other amount as the Commissioner may determine by notice in the

Gazette, 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 in subsection (3) for paragraph (b) of the following paragraph: 5
 “(b) the amount to be refunded is [R25 or] more than R100 or more than such other amount as the Commissioner may determine by notice in the *Gazette*; or”; and
- (c) by the substitution for subsection (4) of the following subsection: 10
 “(4) Where the amount that would be refunded under subsection (2) is determined to be [R25 or] less than R100 or such other amount as the Commissioner may determine by notice in the *Gazette*, 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).” 15

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996 and section 53 of Act 27 of 1997, as substituted by section 177 of Act 60 of 2001, as amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R111 in *Government Gazette* 24274 of 2003, section 189 of Act 45 of 2003, sections 52–55 of Act 16 of 2004, section 108 of Act 32 of 2004 and sections 111–113 of Act 28 of 2005 20

89. Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the insertion in paragraph 8 after Item No. 412.27/00.00/01.00 of the following Item: 25

413.00 IMPORTED GOODS FOR SALE, CONSUMPTION OR USE

DURING 2010 FIFA WORLD CUP SOUTH AFRICA WHEN IMPORTED AND ENTERED BY QUALIFYING PERSONS AND EMPLOYEES OF QUALIFYING PERSONS

NOTES: 30

For the purposes of this item 413.00—

1. (a) the definitions in Schedule 1 of the Revenue Laws Amendment Act, 2006 shall, as may be applicable, apply in respect of any item or Note provided for in this item; and 35
- (b) “qualifying person” means—
 - (i) FIFA and FIFA subsidiaries;
 - (ii) FIFA National Associations;
 - (iii) FIFA Confederations;
 - (iv) Media Representatives; 40
 - (v) Commercial Affiliates;
 - (vi) Merchandising Partners;
 - (vii) Licensees;
 - (viii) FIFA Flagship Store Operator;
 - (ix) FIFA Designated Service Providers including the pitch importer, Concession Operators, Hospitality Service Providers, design servicers, event management and marketing operations servicers and office suppliers; and 45
 - (x) The Host Broadcaster, Broadcasters and Broadcast Rights Agencies; and 50
- (c) the FIFA Flagship Store Operator may only import consumable, semi-durable or promotional Championship related goods under items 413.01, 413.02 and 413.03, excluding tobacco products and cosmetics, and only from a date six months before the 2009 Confederations Cup until one month after the date of the closing ceremony of the 2010 FIFA World Cup South Africa. 55
2. (a) Any goods imported under— 60
 - (i) item 413.01 that have not been sold as contemplated in that item;

- (ii) item 413.02 that have not been consumed, used or distributed as contemplated in that item;
- (iii) item 413.03 that have not been used as contemplated in that item; or
- (iv) item 413.04 that have not been consumed during the secondment, shall be—
- (aa) entered for home consumption and payment of tax;
- (bb) abandoned or destroyed under item 413.05;
- (cc) donated under item 413.06;
- (dd) exported within any period contemplated in paragraph (b); or
- (ee) otherwise dealt with as the Commissioner may determine.
- (b) The goods contemplated in subparagraph (dd) of Note 2(a) shall be exported in the case of—
- (i) goods imported by—
- (aa) FIFA and FIFA subsidiaries under item 413.01, 413.02 or 413.03 within a period of 24 months after the date of the Championship closing ceremony;
- (bb) qualifying persons, other than FIFA and FIFA subsidiaries, under item 413.01, 413.02 or 413.03, within a period of 12 months after the date of the Championship closing ceremony;
- (ii) goods imported under item 413.04 within a period of 12 months after the date of the Championship closing ceremony:
- Provided that the Commissioner may, on good cause shown, and subject to such conditions as he or she may impose, extend such periods.
- (c) Goods not exported must be entered for payment of tax, abandoned, donated or otherwise dealt with as contemplated in paragraph (a), within such time as the Commissioner may determine.
3. (a) Whenever goods are sold, distributed, donated, used contrary to the provisions of this item or not re-exported within the periods contemplated in Note 2(b), tax shall be payable upon demand by the Commissioner.
- (b) The value for tax purposes in respect of goods contemplated in paragraph (a), shall be—
- (i) the lower of the cost or market value on the earlier of the—
- (aa) date upon which such goods are sold, donated or used contrary to the relevant item; or
- (bb) date of expiry of the applicable period for re-exportation,
- as if the goods were imported on that date;
- (ii) if donated otherwise than contemplated in item 413.06, the lower of the cost or market value on the date of that donation as if the goods were imported by the donee (*recipient*) on that date;
- (iii) if disposed of by a person to whom donated in terms of item 413.06 within five years after the date of acquiring the donation, the lower of the cost or market value at the date of the donation as if the goods were imported on that date;
- (c) Whenever tax is payable, the rate of tax shall be the rate applicable on the date contemplated in paragraph (b).
4. Any import under item 413.04 shall be supported by an inventory of all household goods and by the particulars of any motor vehicle imported for own use which shall include its colour, make, model, chassis number and engine number.

5. For the purposes of item 413.05 any offer to abandon or any application to destroy goods shall be made in writing by, or on behalf of, the qualifying person, employee or donee contemplated in the items concerned and shall—
- (a) include the bill of entry and all applicable invoices and other documents relating to the importation of the goods; and
 - (b) state the identifying particulars of the goods.
6. Notwithstanding other paragraphs or items provided for in this Schedule, goods may only be imported and entered for sale, consumption or use in the 2010 FIFA World Cup South Africa under item 413.00.
- 413.01/00.00/01.00 Consumable or semi-durable goods imported by qualifying persons for sale at any site during the Championship. 5
- 413.02/00.00/01.00 Goods, including consumable goods and promotional material individually of little value imported by qualifying persons not for sale but for consumption, use or distribution in connection with the Championship. 15
- 413.03/00.00/01.00 Samples of consumable and semi-durable goods imported by a qualifying person not for sale, but for distribution at any site during the Championship. 20
- 413.04/00.00/01.00 Household furniture, other household effects and other removable articles, excluding alcoholic beverages and tobacco goods, including equipment necessary for the exercise of his or her calling, trade or profession and one motor vehicle, the *bona fide* property of any employee, not resident in the Republic for income tax purposes, of any qualifying person and members of his or her family, imported for own use on his or her temporary secondment to the Republic for purposes of the 2010 FIFA World Cup South Africa. 25
- 413.05/00.00/01.00 Goods of any description cleared under items 413.01, 413.02, 413.03 and 413.04 unconditionally abandoned to the Commissioner or goods destroyed with the permission of the Commissioner: Provided that the Commissioner may decline to accept abandonment or grant permission for destruction. 30
- 413.06/00.00/01.00 Goods of any description cleared under items 413.01, 413.02, 413.03 and 413.04 unconditionally donated to a person exempt from income tax in terms of section 10 of the Income Tax Act, or any public benefit organisation as contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) of that Act that has been approved by the Commissioner in terms of section 30(3) of that Act: Provided that if the goods are disposed of by that person or public benefit organisation within five years from the date of acquiring such donation, tax shall be payable as contemplated in Note 3.”. 35 40

Amendment of section 1 of Act 31 of 1998, as amended by section 190 of Act 45 of 2003, section 109 of Act 32 of 2004 and section 127 of Act 31 of 2005 and section 55 of Act 9 of 2006 45

90. Section 1 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution for the definition of “**person**” of the following definition:

“ ‘**person**’ includes any public authority, any [**local authority**] ‘**municipality**’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund;” 50

Amendment of section 5A of Act 31 of 1998, as inserted by section 131 of Act 31 of 2005 and substituted by section 57 of Act 9 of 2006 55

91. Section 5A of the Uncertificated Securities Tax Act, 1998, is hereby amended by the addition of the following subsection:

“(3) Any tax payable in terms of subsection (2) must be paid through the member or participant holding the securities in custody, in respect of which a

person has acquired the beneficial ownership or which have been cancelled or redeemed.”.

Amendment of section 7 of Act 31 of 1998, as amended by section 110 of Act 53 of 1999 and section 133 of Act 31 of 2005

92. Section 7 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5

“(c) referred to in section 5A is payable, **[by the person acquiring the beneficial ownership of the securities]** by the member or participant holding the securities in custody, in respect of which a person acquired the beneficial ownership or which has been redeemed or cancelled, to the Commissioner by the 14th day of every month in respect of changes in beneficial ownership in securities during the previous month, and that person shall by the same date submit a declaration, in the form and containing the information prescribed by the Commissioner, stating the amount of tax (if any) payable by that person.”. 10

Amendment of section 3 of Act 63 of 2001 as amended by section 2 of Act 32 of 2003 15

93. Section 3 of the Unemployment Insurance Act, 2001, is hereby amended by the deletion in subsection (1) of the word “and” at the end of paragraph (d) and by the deletion of paragraph (e).

Amendment of section 14 of Act 63 of 2001

94. Section 14 of the Unemployment Insurance Act, 2001, is hereby amended by the deletion in paragraph (a) of subparagraph (i). 20

Amendment of section 145 of Act 45 of 2003

95. Section 145 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) (i) Subsection (1)(c), (d), (e) and (f) shall come into operation on the date of promulgation of this Act. 25
(ii) Subsection (1)(a) and (b) shall be deemed to have come into operation on 1 July 2001.”.

Amendment of section 62 of Act 32 of 2004

96. Section 62 of the Revenue Laws Amendment Act, 2004, is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) Subsection (1) shall come into operation on **[the date of promulgation of this Act]** 1 September 2007 and shall apply in respect of any disposal during any year of assessment commencing on or after that date.”.

Amendment of section 26 of Act 9 of 2005 35

97. Section 26 of the Taxation Laws Amendment Act, 2005, is hereby amended—

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

“(b) which was issued by 1 January ~~[2007]~~ 2008 by that company to that person in exchange for any right held by that person in that non-proprietary exchange prior to that conversion.”; and 40

(b) by the insertion after section 26 of the following section:

“(26A) Section 26 is deemed to have come into operation on 1 July 2005.”.

Amendment to Index to Act 9 of 2006

98. The Index to the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended— 45

(a) by the substitution for item 11 of the following item:

“**Disallowance of [deduction, allowances and] losses and deductions**”; and

- (b) by the substitution for item 61 of the following item:
“Transitional [Mineral and] petroleum provisions”.

Amendment of section 8 of Act 9 of 2006

99. (1) Section 8 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended— 5

- (a) by the substitution for paragraph (b) of the following paragraph:
 “(b) employees’ tax in terms of the Fourth Schedule to the Income Tax Act, in respect of any remuneration as defined in that schedule paid to employees engaged in the carrying on of any business during the qualifying period;” and 10
- (b) by the substitution for paragraph (f) of the following paragraph:
 “(f) contributions payable in terms of the Unemployment Insurance Contributions Act in respect of any remuneration, as defined in that Act, paid in the course of the carrying on of any business during the qualifying period; and” 15
- (2) Subsection (1) shall be deemed to have come into operation on 25 July 2006.

Amendment of section 11 of Act 9 of 2006

100. Section 11 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for the heading of the following heading: 20
“Disallowance of [deductions, allowances and] losses and deductions”

Amendment of section 23 of Act 9 of 2006

101. Section 23 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution in paragraph (e) for the expression “(1)(zL)” of the expression “(1)(zI)”. 25

Amendment of section 30 of Act 9 of 2006

102. The Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution in section 30 for paragraph (b) of the following paragraph: 30
 “(b) by the substitution in subparagraph (2)(a) [of] for subitem (ii) [for] of the following subitem: 35
 ‘(ii) to any destination outside the Republic if such travel was undertaken on a flight or voyage made in the ordinary course of the employer’s business and such employee, spouse or minor child was not permitted to make a firm advance reservation of the seat or berth occupied by him[, or if the lowest fare in respect of such travel facility, as contemplated in subparagraph (1)(a), did not exceed R500] or her;’ ”.

Amendment of section 54 of Act 9 of 2006

103. Section 54 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for subsection (2) of the following subsection: 40
 “(2) Subsection (1) is deemed to have come into operation on 1 March 2006 and applies in respect of any tax period [commending] commencing on or after that date.”. 45

Substitution of section 61 of Act 9 of 2006

104. The following section is hereby substituted for section 61 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006:

“Transitional [Mineral and] petroleum provisions

61. The transitional **[mineral and]** petroleum provisions relating to the preservation of the tax terms contained in the OP26 right for converted pre-existing petroleum rights and new petroleum rights are set out in Schedule 3.”. 5

Amendment of Schedule 1 to Act 9 of 2006

105. The Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, 10 is hereby amended by the insertion in Schedule 1 after subitem (h) of item 1 of the following subitem:

“(i) on each rand of taxable income derived by a public benefit organisation or recreational club, 29 cents:”.

Special tax measures relating to 2010 FIFA World Cup South Africa 15

106. (1) Special tax measures relating to the 2010 FIFA World Cup South Africa are set out in section 89 of this Act and Schedules 1 and 2 to this Act.

(2) Subsection (1) and Schedules 1 and 2 are deemed to have come into operation on 1 April 2006.

Short title and commencement 20

107. (1) This Act is called the Revenue Laws Amendment Act, 2006.

(2) Save in so far as is otherwise provided for in this Act or the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment 25 ending on or after 1 January 2007.

SCHEDULE 1

(Section 106)

SPECIAL TAX MEASURES RELATING TO 2010 FIFA WORLD CUP
SOUTH AFRICA

Part I

Interpretation

Definitions

1. (1) In this Schedule, any word or expression to which a meaning has been assigned in the Transfer Duty Act, 1949 (Act No.40 of 1949), Income Tax Act, 1962 (Act No. 58 of 1962), Customs and Excise Act, 1964 (Act No. 91 of 1964), Stamp Duties Act, 1968 (Act No. 77 of 1968), Value-Added Tax Act, 1991 (Act No. 89 of 1991), Skills Development Levies Act, 1999 (Act No. 9 of 1999) or Unemployment Insurance Contribution Act, 2002 (Act No.4 of 2002), bears (having regard to the context within which such word or expression is used) the meaning so assigned, unless the context indicates otherwise, and—

“**Broadcast Rights Agency**” means an entity appointed by *FIFA* as *FIFA*'s representative for the solicitation and appointment of prospective *Broadcasters* in a particular territory;

“**Broadcaster**” means an entity which acquires the right to broadcast or transmit the basic audiovisual feed (or any supplemental feed), or to broadcast live radio commentary, of any match of the *Championship* in any media;

“**Championship**” means all matches and ceremonies of the 2009 *FIFA Confederations Cup* and the 2010 *FIFA World Cup* and such other directly related official events, including draws, galas, conferences and cultural events, as may be agreed in good faith between *FIFA* and the *Commissioner*;

“**Championship duration**” means with respect to the 2009 *FIFA Confederations Cup* and the 2010 *FIFA World Cup* respectively, the period commencing one week prior to the opening ceremony and terminating immediately after the closing ceremony;

“**Championship site**” means—

- (a) any official *FIFA* stadium and the entire premises of such a stadium inside the perimeter fence and the aerial space above such stadium premises;
- (b) any exclusion zone, being the area surrounding or adjacent to the stadium perimeter which *FIFA* notifies to the *Local Organising Committee* as comprising an exclusion zone in which certain commercial activities are prohibited by entities other than *Commercial Affiliates*, the *Broadcasters*, the *Licensees* and official *FIFA* approved entities;
- (c) any official *Championship* related parking areas, *Championship* press and television centres (including the International Broadcast Centres, VIP areas and any other areas or facilities as may be agreed in good faith by *FIFA* and the *Commissioner* utilised for official events;
- (d) any training sites (other than sites contemplated in paragraph (a)), being any venues selected to host any official *Championship*-related training sessions for the *team* of any *Participating National Association* in the *Republic*;
- (e) any official host city public viewing venues, limited to a maximum of two public viewing venues per host city; and
- (f) the *nominated FIFA flagship store*;

“**Commercial Affiliate**” means—

- (a) any *FIFA* Partner, being an entity to which *FIFA* grants the most comprehensive package of global advertising, promotional and marketing rights in relation to *FIFA*, *FIFA*'s activities and the *Championship*;
- (b) any *FIFA* World Cup Sponsor, being an entity to which *FIFA* grants the second most comprehensive level of global advertising, promotional and marketing rights in relation to the *Championship*;
- (c) any National Supporter, being an entity whose principal place of business and principal operations are situated in the *Republic* and which is granted a third tier package of advertising, promotional and marketing rights in relation to the *Championship*, which rights are exercisable only in the *Republic*; and

(d) any Branded *Licensee*, being an entity (other than an entity contemplated in paragraph (a), (b) or (c)) to which *FIFA* grants the right to place any *official emblem* on products (including related product packaging and product advertising materials) or in connection with the provisions of services which also bear the corporate identification or trademark of that entity;

“**Commissioner**” means the Commissioner for the South African Revenue Service;

“**Concession operator**” means any entity appointed to operate on-site concessions at the *Championship*, including food and beverage concessions and merchandise concessions;

“**Customs and Excise Act, 1964**” means the Customs and Excise Act, 1964 (Act No.91 of 1964).

“**FIFA**” means the Fédération Internationale de Football Association (FIFA);

“**FIFA Confederations**” means the continental confederations officially affiliated to *FIFA*, being the AFC, OFC, UEFA, Conmebal, CAF and Concacaf;

“**FIFA Delegation**” means with respect to the *Championship* the following individuals:

- (a) *FIFA* staff and the staff of all *FIFA Subsidiaries*;
- (b) members of *FIFA*'s internal official committees;
- (c) VVIP, VIP and other guests of *FIFA*; and
- (d) all other individuals who are nominated by *FIFA* as being members of its delegation;

“**FIFA Designated Service Provider**” means with respect to the *Championship*—

- (a) the officially appointed sole service provider rendering the ticketing, on-site information technology and accommodation solutions; and
- (b) any officially appointed service provider providing signage;

“**FIFA Subsidiaries**” means all entities wholly owned and controlled by *FIFA*;

“**Hospitality Service Provider**” means any entity appointed to conduct or operate the official hospitality program for the *Championship* and any entity appointed to provide the core services relating to security, infrastructure and catering for the official hospitality program;

“**Host Broadcaster**” means the organisation appointed by *FIFA*, or *FIFA*'s Rights Agency, to ensure and provide the production of the broadcast signals of the matches and other events of the *Championship*, and the provision of all related services

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

“**Licensee**” means any entity (other than a *Commercial Affiliate*) to which *FIFA* grants the right to use any *official emblem* on items of merchandise and in its marketing and advertising activities in relation to the sale of those items of merchandise, but to which it does not otherwise grant any advertising, marketing or promotional rights related to *FIFA* of the *Championship*;

“**Local Organising Committee**” means the official *FIFA* accredited body in the *Republic* responsible for the entire organisation, staging and hosting of the *Championship*;

“**Media Representative**” means a member of the written press or photographer to whom *FIFA* and the *Local Organising Committee* grants press and photographer accreditation to access any *Championship site*;

“**Merchandising Partner**” means any entity appointed by *FIFA* as its representative for the solicitation and appointment of prospective *Licensees*, or any entity entitled to conduct *FIFA* or *Championship* related retail merchandise operations;

“**nominated FIFA flagship store**” means the single retail store nominated by *FIFA* for *FIFA*'s retail concept and which only retails consumable and semi-durable *Championship*-related goods and, in *FIFA*'s discretion, meals and beverages sold for consumption within the confines of an in-store restaurant but excluding cosmetics and tobacco products;

“**official emblem**” means any of the official *Championship Emblems*;

“**Organising Association Agreement**” means the Organising Association Agreement entered into by *FIFA* and *SAFA* in terms of which *SAFA* will host the *Championship*;

“**Participating National Association**” means any National Association affiliated to *FIFA*, qualified to enter a *team* in the final tournament of the *Championship* and any representative of the National Association excluding any member of the *team*;

“**Republic**” means the Republic of South Africa;

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

“**SAFA**” means the South African Football Association or its successors-in-title;

“**semi-durable**” with respect to trading stock means any goods (including clothing, footwear, textiles and glassware) that have a limited economic lifespan (usually longer than one year but less than three years) and where the unit selling price thereof does not exceed R2000;

“**team**” means any team representing a *Participating National Association* which has qualified to participate in the *Championship* and includes all squad members, coaches as stipulated in the *Championship* regulations, medical personnel and other auxiliary staff;

“**value-added tax**” means the tax levied in terms of the *Value-Added Tax Act, 1991*;

“**Value-Added Tax Act, 1991**” means the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

(2) Any reference in this Schedule to a specific entity, means that entity so specified and includes any affiliated entity in which that specified entity holds at least a 20 per cent interest, if the activities or services rendered by the affiliated entity are directly connected to the *Championship*.

Part II

Provisions relating to entities generally exempt from taxes, duties and levies

Application of this Part

2. (1) This Part applies in respect of *FIFA*, the *FIFA Subsidiaries* and all *Participating National Associations* (other than *SAFA*).

(2) This Part applies only to the extent that the activities of the entities contemplated in subparagraph (1) relate to the *Championship*.

Entities exempt from all taxes, duties and levies

3. (1) Notwithstanding anything to the contrary contained in any other Act, an entity contemplated in paragraph 2 is, unless expressly otherwise stated in this Schedule,—

- (a) exempt from all taxes, duties, levies and other amounts which may be imposed in terms of any Act administered by the *Commissioner*; and
- (b) deemed not to have a permanent establishment in the *Republic* by virtue of any activities carried on in the *Republic* which relate to the *Championship*.

(2) A person who is liable to pay any amount to an entity contemplated in paragraph 2, is not required to withhold any amount from that payment in terms of section 35, 35A or Part IIIA of Chapter II of the *Income Tax Act, 1962*.

(3) Subparagraph (1) does not apply in respect of—

- (a) any taxes and duties in respect of which paragraph 4(2), 5(1)(b) or Part VI apply;
- (b) fuel taxes;
- (c) excise duties;
- (d) the plastic bag levy;
- (e) air passenger departure tax;
- (f) provincial taxes (gambling taxes and motor vehicle license fees); and
- (g) local government taxes, including property rates.

Treatment of entities for value-added tax purposes

4. (1) An entity contemplated in paragraph 2 must be regarded as a diplomatic or consular mission as contemplated in section 68(1)(b) of the *Value-Added Tax Act, 1991*, for purposes of obtaining a refund of *value-added tax* paid by that entity or a staff member of that entity relating to transactions concluded directly in connection with the *Championship*.

(2) Notwithstanding the provisions of paragraph 3(1)(a) or any other provision of this Schedule, *FIFA* must ensure that an entity contemplated in paragraph 2 or 6 or the Local Organising Committee must furnish the *Commissioner* with a return as contemplated in

section 30 of the *Value-Added Tax Act, 1991*, in respect of output tax due as a result of the supply by that entity of—

- (a) *Championship* tickets, including all matches and official events;
 - (b) accommodation as contemplated in Clause 19 of the *Organising Association Agreement*; and
 - (c) hospitality provided at venues outside of a *Championship site*,
- and pay the amount of output tax to the *Commissioner* within the period prescribed by the *Commissioner*.

Registration of entity as employer for purposes of certain taxes

5. (1) An entity contemplated in paragraph 2—
- (a) is not required to register with the *Commissioner* as an employer in terms of the Fourth Schedule to the *Income Tax Act, 1962*, or to deduct or withhold any employees' tax from its employees in terms of that Schedule; and
 - (b) must comply with the provisions of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), and the Skills Development Levies Act, 1999 (Act No. 9 of 1999), to the extent that those Acts apply in respect of any employees of that entity.
- (2) Notwithstanding subparagraph (1)(a), an entity must provide to the *Commissioner* a list containing the names, identification numbers and addresses of all its employees who are *residents of the Republic* and in respect of whom the provisions of the Fourth Schedule to the *Income Tax Act, 1962*, would, but for the provisions of this Schedule, apply.
- (3) An employee contemplated in subparagraph (2) is deemed to be a provisional taxpayer for purposes of the Fourth Schedule to the *Income Tax Act, 1962*.

Part III

Tax treatment of certain other entities

Application of this Part

6. This Part applies in respect of an entity which is—
- (a) a *Commercial Affiliate*;
 - (b) a *Licensee*;
 - (c) the *Host Broadcaster*, a *Broadcaster* or a *Broadcast Rights Agency*;
 - (d) a *Merchandising Partner*;
 - (e) a *FIFA Designated Service Provider*;
 - (f) a *Concession operator*;
 - (g) a *Hospitality Service Provider*; or
 - (h) the *nominated FIFA flagship store operator*.

Income tax treatment of receipts and accruals

7. (1) Notwithstanding anything to the contrary contained in the *Income Tax Act, 1962*, but subject to subparagraph (2), any receipt or accrual of an entity contemplated in paragraph 6 is excluded from “gross income” as defined in that Act, to the extent that it is derived by that person from—
- (a) the sale of any consumable or *semi-durable* goods; or
 - (b) any service rendered by that entity which is—
 - (i) intrinsic to the staging of the *Championship*;
 - (ii) enjoyed or partially utilised at a *Championship site*; and
 - (iii) paid for by an individual member of the general public or by *FIFA*, a *FIFA Subsidiary* or the *Local Organising Committee*.
- (2) Subparagraph (1) applies only in respect of the sale of goods or services rendered at a site contemplated in—
- (a) paragraph (a), (b) and (c) of the definition of “*Championship site*” during the *Championship duration*;
 - (b) paragraph (d) of the definition of “*Championship site*” on official *FIFA* sanctioned training days;
 - (c) paragraph (e) of the definition of “*Championship site*” on match days;

- (d) paragraph (f) of the definition of “*Championship site*” during the period commencing six months prior to the opening ceremony of the 2009 Confederations Cup and terminating one month after the closing ceremony of the 2010 FIFA World Cup.

(3) Notwithstanding subparagraph (2), any receipt or accrual of a *FIFA Designated Service Provider* is excluded from “gross income” as defined in that Act, to the extent that it is derived by that entity from the sale of any goods or rendering of services which are directly connected to the *Championship* and those goods are sold or services are rendered within the parameters for which that *FIFA Designated Service Provider* has been accredited by *FIFA*.

Value-added tax treatment of supply of goods or services

8. Notwithstanding anything contrary contained in the *Value-Added Tax Act, 1991*, an entity contemplated in paragraph 6 must levy *value-added tax* at the zero rate on all supplies by that entity of goods or services as contemplated in paragraph 7(1)(a) or (b) at a *Championship site*.

Part IV

Tax treatment of certain individuals

Application of this Part

9. (1) This Part applies in respect of any individual who is not a *resident of the Republic* and who is—

- (a) a member of the *FIFA Delegation*;
- (b) a *Championship* referee or assistant referee;
- (c) an official of any *Participating National Association* (other than officials of *SAFA*);
- (d) a *FIFA* Confederation Official;
- (e) a *Media Representative*;
- (f) a staff member of a *Commercial Affiliate*;
- (g) a staff member of a *Merchandising Partner*;
- (h) a staff member of a *FIFA Designated Service Provider*; or
- (i) a staff member of the *Host Broadcaster*, the *Broadcast Rights Agency* or a *Broadcaster*.

(2) Subparagraph (1) does not include—

- (a) any officials of *SAFA*;
- (b) members of a *team*; or
- (c) any directors and staff members of the *Local Organising Committee*.

Income tax treatment of receipts and accruals

10. Notwithstanding anything to the contrary contained in the *Income Tax Act, 1962*, any receipt or accrual of an individual contemplated in paragraph 9 is excluded from “gross income” as defined in that Act, to the extent that it is derived from activities connected with the *Championship*.

Part V

General provisions relating to taxes

Disallowance of deductions relating to amounts exempt from income tax

11. (1) No deduction or allowance shall be allowed in respect of any expenses or costs incurred in respect of amounts which are in terms of this Schedule not subject to tax.

(2) If any cost or expense is incurred in respect of both amounts contemplated in subparagraph (1) and amounts which are subject to tax, that cost or expense must be allocated proportionately to those amounts for purposes of determining the deductible portion of that cost or expense.

Certain receipts and accruals deemed not to be from source in Republic

12. An amount received by or accrued to a person who is not a *resident of the Republic* is deemed not to be from a source in the *Republic* for purposes of the *Income Tax Act, 1962*, if that amount—

- (a) is derived as a result of that person’s sponsoring or broadcasting of the *Championship*; and
- (b) is received or accrued from any goods sold for foreign consumption or services rendered outside the *Republic*.

Part VI

Provisions relating to importation and re-exportation of goods

FIFA import duty rebate arrangements

13. (1) (a) This paragraph relates to goods imported under rebate of duty by a qualifying person or employee as contemplated in Part 1A of Schedule No. 4 to the *Customs and Excise Act, 1964*, as inserted by Schedule 2 to the Revenue Laws Amendment Act, 2006.

(b) In this paragraph “rebate provisions” means the provisions for rebates of duty referred to in Part 1A of Schedule No. 4 to the *Customs and Excise Act, 1964*.

(2) Notwithstanding anything to the contrary contained in the *Customs and Excise Act, 1964* —

- (a) the importation of goods under rebate of duty, the sale or other disposal of or use of such goods, any requirement in connection therewith, payment of any duty thereon and the value for duty purposes when duty becomes payable shall, subject to this paragraph, be in accordance with the rebate provisions of the said Part 1A of Schedule No. 4 and where that part does not otherwise provide, the provisions of section 75 of that Act;
- (b) any cost or market value contemplated in the rebate provisions shall be proved by the importer and may be determined by the Commissioner;
- (c) the Commissioner may make rules under section 120 of that Act regarding any matter which is necessary to prescribe or useful to achieve the efficient and effective administration of this paragraph and the rebate provisions.

(3) The Commissioner may conduct inspections and audits to verify whether any goods admitted under the rebate provisions concerned have been, or are being, sold or used in accordance with the provisions of those items.

(4) Except as otherwise contemplated in this paragraph, the provisions of the *Customs and Excise Act, 1964*, shall apply for the purposes of administering the provisions of this paragraph and any rebate provisions.

Part VII

Tax Treatment of the LOC

14. Notwithstanding anything to the contrary contained in the *Value-Added Tax Act, 1991*, the supply of the services comprising the organising, staging and hosting of the *2010 FIFA World Cup South Africa* which are rendered by the *LOC* to *FIFA* must be charged with tax at the rate of zero per cent.

Part VIII

Miscellaneous

Execution of documents exempt from taxes and duties

15. No stamp duties, transfer duty or similar taxes or duties which may be imposed in terms of any Act administered by the *Commissioner* are payable by *FIFA* or any *FIFA Subsidiaries* in connection with the *Championship*.

Circumstances where provisions of this Schedule do not apply

16. If any person identified in this Schedule fails to comply with any provision of the Memorandum of Understanding entered into between *FIFA* and the South African Government, the provisions of this Schedule shall not apply to that person to the extent determined by the *Commissioner* in consultation with *FIFA*.

SCHEDULE 2
Amendments to Schedule No. 4 to the Customs and Excise Act, 1964

(Section 106)

Part 1A

Rebate of duty in respect of goods imported for the 2010 FIFA World Cup South Africa:

Rebate Item	Tariff Heading	Rebate Code	C D	Description	Extent of Rebate
				SCHEDULE NO. 4 PART 1A	
413.00				<p>IMPORTED GOODS ADMITTED UNDER REBATE OF DUTY FOR SALE, CONSUMPTION OR USE IN THE 2010 FIFA WORLD CUP SOUTH AFRICA WHEN IMPORTED AND ENTERED BY QUALIFYING PERSONS AND EMPLOYEES OF QUALIFYING PERSONS</p> <p>NOTES:</p> <p>For the purposes of this Part—</p> <p>1. (a) the definitions in Schedule 1 of the Revenue Laws Amendment Act, 2006 shall, as may be applicable, apply in respect of any rebate item or Note provided for in this Part; and</p> <p>(b) “qualifying person” means—</p> <p style="padding-left: 20px;">(i) FIFA and FIFA subsidiaries;</p> <p style="padding-left: 20px;">(ii) FIFA National Associations;</p> <p style="padding-left: 20px;">(iii) FIFA Confederations;</p> <p style="padding-left: 20px;">(iv) Media Representatives;</p> <p style="padding-left: 20px;">(v) Commercial Affiliates;</p> <p style="padding-left: 20px;">(vi) Merchandising Partners;</p> <p style="padding-left: 20px;">(vii) Licensees;</p> <p style="padding-left: 20px;">(viii) FIFA Flagship Store Operator;</p> <p style="padding-left: 20px;">(ix) FIFA Designated Service Providers including the pitch importer, Concession Operators, Hospitality Service Providers, design servicers, event management, marketing operations servicers and office suppliers; and</p> <p style="padding-left: 20px;">(x) The Host Broadcaster, Broadcasters and Broadcast Rights Agencies; and</p> <p>(c) the FIFA Flagship Store Operator may only import consumable, semi-durable or promotional Championship related goods under item 413.01, 413.02 and 413.03, excluding tobacco products and cosmetics, and only from a date six months before the 2009 Confederations Cup until one month after the date of the closing ceremony of the 2010 FIFA World Cup South Africa.</p> <p>2. (a) Any goods imported under—</p> <p style="padding-left: 20px;">(i) Item 413.01 that have not been sold as contemplated in that item;</p> <p style="padding-left: 20px;">(ii) item 413.02 that have not been consumed, used or distributed as contemplated in that item;</p> <p style="padding-left: 20px;">(iii) Item 413.03 that have not been used as contemplated in that item; or</p> <p style="padding-left: 20px;">(iv) Item 413.04 that have not been consumed during the secondment,</p> <p>shall be—</p> <p style="padding-left: 20px;">(aa) entered for payment of duty and the duty payable brought to account;</p> <p style="padding-left: 20px;">(bb) abandoned or destroyed under item 413.05;</p> <p style="padding-left: 20px;">(cc) donated under item 413.06;</p> <p style="padding-left: 20px;">(dd) exported within any period contemplated in paragraph (b); or</p> <p style="padding-left: 20px;">(ee) otherwise dealt with as the Commissioner may determine.</p>	

Rebate Item	Tariff Heading	Rebate Code	C D	Description	Extent of Re-bate
				<p>(b) The goods contemplated in subparagraph (dd) of Note 2(a) shall be exported in the case of—</p> <p>(i) goods imported by—</p> <p>(a) FIFA and FIFA subsidiaries under item 413.01, 413.02 or 413.03, within a period of 24 months after the date of the Championship closing ceremony;</p> <p>(b) qualifying persons other than FIFA and FIFA subsidiaries under item 413.01, 413.02 or 413.03, within a period of 12 months after the date of the Championship closing ceremony;</p> <p>(ii) goods imported under item 413.04, within a period of 12 months after the date of the Championship closing ceremony:</p> <p>Provided that the Commissioner may, on good cause shown, and subject to such conditions as he or she may impose, extend such periods.</p> <p>(c) Goods not exported must be entered for payment of duty, abandoned, donated or otherwise dealt with as contemplated in paragraph (a), within such time as the Commissioner may determine.</p> <p>3. (a) Whenever goods are sold, distributed, donated or used contrary to the provisions of this Part or not re-exported within the periods contemplated in Note 2 (b), duty shall be payable upon demand by the Commissioner.</p> <p>(b) The value for duty purposes in respect of goods contemplated in paragraph (a), shall be—</p> <p>(i) the lower of the cost or market value on the earlier of the—</p> <p>(aa) date upon which such goods are so sold, donated or used contrary to the rebate provisions; or</p> <p>(bb) date of expiry of the applicable period for re-exportation,</p> <p>as if the goods were imported on that date;</p> <p>(ii) if donated otherwise than contemplated in item 413.06, the lower of the cost or market value on the date of donation as if the goods were imported by the donee (<i>recipient</i>) on that date;</p> <p>(iii) if disposed of by a person to whom donated in terms of item 413.06 within five years after the date of acquiring the donation, the lower of the cost or market value on the date of the donation as if the goods were imported on that date.</p> <p>(c) Whenever duty is payable the rate of duty shall be the rate applicable on the date contemplated in paragraph (b).</p>	

Rebate Item	Tariff Heading	Rebate Code	C D	Description	Extent of Rebate
				<p>4. Any entry under item 413.04 shall be supported by an inventory of all household goods and by the particulars of any motor vehicle imported for own use which shall include its colour, make, model, chassis number and engine number.</p> <p>5. For the purposes of rebate item 413.05—</p> <p>(a) any offer to abandon or any application to destroy goods shall be made in writing by, or on behalf of, the qualifying person, employee or donee contemplated in the items concerned and shall—</p> <p>(i) include the bill of entry and all applicable invoices and other documents relating to the importation of the goods;</p> <p>(ii) state the identifying particulars of the goods; and</p> <p>(iii) indemnify the Commissioner against any claim by any other person;</p> <p>(b) the person contemplated in paragraph (a) shall be responsible for the cost of storage in and removal to the State warehouse or any place of security indicated by the Commissioner, if such storage or removal is required by the Commissioner, and for any other expenses including the cost of destruction; and</p> <p>(c) goods shall be destroyed under the supervision of an officer.</p> <p>6. Goods must be entered under the items of this Part, whether or not liable to any duty.</p>	
413.01	00.00	01.00	00	Consumable or semi-durable goods imported by qualifying persons for sale at any site during the Championship.	Full duty
413.02	00.00	01.00	00	Capital goods, consumable goods or promotional material individually of little value, imported by qualifying persons not for sale but for consumption, use or distribution in connection with the Championship.	Full duty
413.03	00.00	01.00	00	Samples of consumable and semi-durable goods imported by a qualifying person not for sale, but for distribution at any site during the Championship.	Full duty
413.04	00.00	01.00	00	Household furniture, other household effects and other removable articles, excluding alcoholic beverages and tobacco goods, including equipment necessary for the exercise of his or her calling, trade or profession and one motor vehicle, the <i>bona fide</i> property of any employee, not resident in the Republic for income tax purposes, of any qualifying person and members of his or her family, imported for own use on his or her temporary secondment to the Republic for purposes of the 2010 FIFA World Cup South Africa.	Full duty
413.05	00.00	01.00	00	Goods of any description cleared under rebate items 413.01, 413.02, 413.03 and 413.04 unconditionally abandoned to the Commissioner or goods destroyed with the permission of the Commissioner: Provided that the Commissioner may decline to accept abandonment or grant permission for destruction.	Full duty
413.06	00.00	01.00	00	Goods of any description cleared under rebate items 413.01, 413.02, 413.03 and 413.04 unconditionally donated to a person exempt from income tax in terms of section 10 of the Income Tax Act, 1962, or any public benefit organisation as contemplated in paragraph (a) of the definition of "public benefit organisation" in section 30(1) that has been approved of by the Commissioner in terms of section 30(3) of that Act: Provided that if the goods are disposed of by that person or public benefit organisation within five years from the date of acquiring such donation, duty shall be payable as contemplated in Note 3.	Full duty