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RELEASE

The draft Taxation Laws Amendment Bill, 2011, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2011, as tabled in Parliament earlier this year.

The National Treasury invites members of the public to submit comments on the draft legislation by no later than 5 July 2011 to:

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DRAFT
REPUBLIC OF SOUTH AFRICA

DRAFT TAXATION LAWS
AMENDMENT BILL

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

(MINISTER OF FINANCE)

02 June 2011

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To—

- amend the Transfer Duty Act, 1949, so as to amend and delete certain definitions; to modify rates and thresholds; to make new provision; and to effect textual and consequential amendments;
- amend the Income Tax Act, 1962, so as to fix the rates of normal tax and amend monetary amounts; to amend, delete and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make new provision; and to effect textual and consequential amendments;
- amend the Customs and Excise Act, 1964, so as to amend the air passenger tax; to amend rates of duty in Schedule No. 1; and to make provision for continuations;
- amend the Value-Added Tax Act, 1991, so as to amend certain definitions; to make new provision; to amend certain provisions; to amend a Schedule; and to effect textual and consequential amendments;
- amend the Unemployment Insurance Contributions Act, 2002, so as to extend an exemption;
- amend the Securities Transfer Tax Act, 2007, so as to amend a definition; amend a provision; and to effect consequential amendments;
- amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend certain provisions; and to amend a Schedule;
- amend the Revenue Laws Amendment Act, 2008, so as to amend commencement provisions;
- amend the Taxation Laws Amendment Act, 2009, so as to repeal provisions;

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- amend the Taxation Laws Amendment Act, 2010, so as to amend commencement provisions; to amend certain provisions; and to repeal certain provisions;
- to make provision for special zero-rating in respect of goods and services supplied by Cricket South Africa;

and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002, section 1 of Act 45 of 2003 and section 1 of Act 17 of 2009

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

(a) by the substitution for the definition of “deeds registry” of the following definition:

“ ‘deeds registry’ includes the [**office of the Registrar of Mining Titles and the Office of the Rand Townships Registrar**] Mineral and Petroleum Titles Registration Office;”;

(b) by the substitution in the definition of “fair value” for paragraphs (a) and (d) of the following paragraphs:

“(b) in relation to property as defined in paragraphs (a)[, (b)] and (c) of the definition of ‘property’, means the fair market value of that property as at the date of acquisition thereof;

(d) in relation to a share in a company as contemplated in paragraph (g) of the definition of ‘property’, means so much of the fair market value, as at the date of acquisition of that share, of any property held by that company which constitutes property as contemplated in paragraphs (a)[, (b)] and (c) of that definition (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property) as is attributable to that share”;

(c) by the substitution in the definition of “property” for paragraph (a) of the following paragraph:

“(a) any real right in land but excluding any right under a mortgage bond or a lease of property other than a lease referred to in paragraph [(b) or] (c);”;

(d) by the deletion in the definition of “property” of paragraph (b); and

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(e) by the substitution in the definition of “transaction” for paragraph (a) of the following paragraph:

“(a) in relation to paragraphs (a)[, (b)] and (c) of the definition of ‘property’, an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, lease or otherwise dispose of property to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of property; or”.

Amendment of section 2 of Act 40 of 1949, as amended by section 1 of Act 59 of 1951, section 1 of Act 31 of 1953, section 1 of Act 32 of 1954, section 2 of Act 77 of 1964, section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act 87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993, section 1 of Act 37 of 1995, section 9 of Act 37 of 1996, section 2 of Act 32 of 1999, section 2 of Act 30 of 2002, section 31 of Act 12 of 2003, section 1 of Act 16 of 2004, section 1 of Act 9 of 2005, section 1 of Act 31 of 2005, section 14 of Act 9 of 2006 and section 2 of Act 18 of 2009

2. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (a);

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

“(b) subject to subsection (5)—

(i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R500 000]** R600 000;

(ii) **[5]** 3 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R500 000]** R600 000 but does not exceed R1 million; **[and]**

(iii) **[8]** 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds R1 million but does not exceed R1,5 million; and

(iv) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds R1,5 million;

if the person who acquires the property or in whose favour or for whose benefit the said interest or restriction is renounced is a natural person].”;

(c) by the substitution in subsection (5) for the words preceding the formula of the following words:

“Where a **[natural]** person acquires any property consisting of or including an undivided share in any property (hereinafter in this subsection referred to as the joint property), the duty payable in respect of such acquisition shall be calculated in accordance with the formula”; and

(d) by the deletion of subsection (8).

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(2) Subsection (1) is deemed to have come into operation on 23 February 2011 and applies in respect of property acquired or interest or restriction in any property renounced on or after that date.

Amendment of section 3A of Act 40 of 1949, as inserted by section 2 of Act 7 of 2010

3.(1) Section 3A of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

- “(a) the **[bank]** financier shall be deemed not to have acquired any property under the sharia arrangement; and
- (b) the client shall be deemed to have acquired property from the seller—
 - (i) for an amount equal to the consideration paid by the **[bank]** financier to the seller; and
 - (ii) at such time as the **[bank]** financier acquired the property from the seller by virtue of the transaction between the seller and the **[bank]** financier.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 5 of Act 40 of 1949, as amended by section 6 of Act 103 of 1969, section 2 of Act 86 of 1987, section 3 of Act 136 of 1992, section 2 of Act 20 of 1994, section 2 of Act 45 of 2003 and section 15 of Act 9 of 2006

4. Section 5 of the Transfer Duty Act, 1949, is hereby amended—

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

“(5) In the case of the cession of a lease or sub-lease referred to in paragraph **[(b) or] (c)** of the definition of ‘property’ in section *one*, the value on which duty shall be payable shall be the amount of the consideration payable by the cessionary to the cedent in respect of the cession or, if no consideration is so payable, the declared value of the property acquired under the cession.”;

(b) by the substitution in subsection (7) for paragraph (d) of the following paragraph:

“(d) any valuation made by the **[Government Mining Engineer]** Director-General: Mineral Resources or by any other competent and disinterested person appointed by the Commissioner.”; and

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

“(a) exceeds the amount of the consideration payable in respect of that property, or the declared value, as the case may be, by not less than one-third of the consideration payable or the declared value, as the case may be, the costs of any valuation made by a

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person referred to in paragraph (d) of subsection (7) (other than the [Government Mining Engineer] Director-General: Mineral Resources) shall be paid by the person liable for the payment of the duty;”.

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, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007, section 1 of Act 60 of 2008, section 3 of Act 17 of 2009 and section 3 of Act 7 of 2010

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

(a) by the substitution in subsection (1)(l) for subparagraph (i) of the following subparagraphs:

“(Ai) an asset-for-share transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);

(i) an amalgamation transaction contemplated in section 44 of [the Income Tax Act, 1962 (Act No. 58 of 1962)] that Act;”;

(b) by the substitution in subsection (1)(l) for subparagraph (iv) of the following subparagraph:

“(iv) a transaction which would have constituted a transaction or distribution contemplated in subparagraphs [(i)](Ai) to (iii) regardless of—”; and

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

“(p) any person that is a party to a ‘sukuk’ as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962);”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2012 and apply in respect of property acquired or interest or restriction in any property renounced on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Fixing of rates of normal tax and amendment of certain amounts for the purposes of Act 58 of 1962

6. (1) The rates of tax fixed by Parliament in terms of section 5(2) of the Income Tax Act, 1962, are set out in paragraphs 1, 3, 4, 5, 6 and 8 of Appendix I to this Act.

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(2) The rate of tax fixed by Parliament in terms of section 48B(1) of the Income Tax Act, 1962, is set out in paragraph 7 of Appendix I to this Act.

(3) The Income Tax Act, 1962, is hereby amended by the substitution for the amounts in section 6(2)(a) and (b) respectively of the amounts in the third column opposite the relevant section in the table in paragraph 2 of Appendix I to this Act.

(4) For the purposes of Appendix I to this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned unless the context otherwise indicates.

(5) Subject to subsection (6), the rates of tax referred to in subsection (1) and the amounts referred to in subsection (3) apply in respect of—

- (a) any person (other than a company or a trust other than a special trust) for the year of assessment commencing on or after 1 March 2011;
- (b) any company for any year of assessment ending during the period of 12 months ending on 31 March 2012; and
- (c) any trust (other than a special trust) for any year of assessment ending on 29 February 2012.

(6) The rate of tax referred to in subsection (2) applies in respect of the taxable turnover of a person that was a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 March 2011.

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 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. R780 of 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, Government Notice No. 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice No. 1503 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, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009 and section 6 of Act 7 of 2010

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

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

“(i) any other company that would be part of the same group of companies as that company if the expression ‘at least 70 per cent of the equity shares of’ 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 of the equity shares of or voting rights in’;”;

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

“(v) any other company if at least 20 per cent of the equity shares of or voting rights in the company are held by that other company, and no shareholder holds the majority voting rights in the company;”;

(c) by the substitution for the definition of “contributed tax capital” of the following definition:

“ **‘contributed tax capital’**, in relation to a class of shares issued by a company, means—

(a) in the case of a company that is not a resident and that becomes a resident on or after 1 January 2011, an amount equal to the sum of—

(i) the market value of all the shares in that company of that class immediately before the date on which that company becomes a resident; and

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after the date on which that company becomes a resident.

reduced by so much of that amount as the company has transferred on or after the date on which the company becomes a resident to shareholders in relation to those shares, and has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; or

(b) in the case of any other company, an amount equal to the sum of—

(i) the stated capital or share capital and share premium of that company immediately before 1 January 2011 in relation to shares in that company of that class issued by that company before that date, less so much of that stated capital or share capital and share premium as would have constituted a dividend, as defined before that date, had that stated capital or share capital and share premium been distributed by that company immediately before that date; and

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after 1 January 2011,

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reduced by so much of that amount as the company has transferred on or after 1 January 2011 to shareholders in relation to those shares, and has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred:

Provided that the amount transferred as contemplated in paragraph (a) or (b) to a shareholder of any class of shares must not exceed an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the transfer the same ratio as the number of shares of that class held by that shareholder bears to the total number of shares of that class;”;

(d) by the substitution for the definition of “contributed tax capital” of the following definition:

“ **‘contributed tax capital’**, in relation to a class of shares issued by a company, means—

(a) in the case of a company that is not a resident and that becomes a resident on or after 1 January 2011, an amount equal to the sum of—

(i) the market value of all the shares in that company of that class immediately before the date on which that company becomes a resident; and

(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after the date on which that company becomes a resident,

reduced by so much of that amount as—

(aa) the company has transferred on or after the date on which the company becomes a resident [to shareholders in relation to those shares,] for the benefit of any person holding a share in that company of that class in respect of that share; and

(bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; or

(b) in the case of any other company, an amount equal to the sum of—

(i) the stated capital or share capital and share premium of that company immediately before 1 January 2011 in relation to shares in that company of that class issued by that company before that date, less so much of that stated capital or share capital and share premium as would have constituted a dividend, as defined before that date, had the stated capital or share capital and share premium been distributed by that company immediately before that date; and

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(ii) the consideration received by or accrued to that company for the issue of shares of that class on or after 1 January 2011, reduced by so much of that amount as—

(aa) the company has transferred on or after 1 January 2011 **[to shareholders in relation to those shares,]** for the benefit of any person holding a share in that company of that class in respect of that share; and

(bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred:

Provided that the amount transferred by a company as contemplated in paragraph (a) or (b) **[to a shareholder]** for the benefit of a person holding shares of any class of shares of that company must—

(i) where the amount is so transferred as a result of the acquisition by the company from that person of any of those shares, be deemed to be an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before that acquisition the same ratio as the number of shares of that class so acquired bears to the total number of shares of that class;

(ii) where the amount is so transferred as part of the liquidation, winding up or deregistration of the company, be deemed to be—

(aa) so transferred on the earlier of—

(A) the date of deregistration; or

(B) in the case of a liquidation or winding-up, the date when the liquidator declares in writing that no reasonable grounds exist to believe that persons holding shares of that class will receive any further distributions in the course of the liquidation or winding up of that company; and

(bb) an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the date contemplated in subparagraph (aa) the same ratio as the number of shares of that class held by that person bears to the total number of shares of that class; or

(iii) where the amount is so transferred in circumstances other than those contemplated in paragraphs (i) or (ii), not exceed an amount that bears to the total of the amount of contributed tax capital attributable to that class of shares immediately before the transfer or application the same ratio as the number of shares of that class held by that **[shareholder]** person bears to the total number of shares of that class;”;

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- (e) by the deletion of the word “or” at the end of subparagraph (iii) of the definition of “dividend”;
- (f) by the addition of the word “or” at the end of subparagraph (iv) of the definition of “dividend”;
- (g) by the addition to the definition of “dividend” of the following subparagraph:

“(v) constitutes a foreign dividend;”;

- (h) by the substitution for the definition of “dividend” of the following definition:

“ **‘dividend’**, in relation to—

(a) a company that is a resident, means any amount transferred or applied by [a] that company for the benefit or on behalf of any [shareholder in relation to that company by virtue of] person in respect of any share held by that [shareholder] person in [that] the company, whether that amount is transferred or applied—

[(a)](i) by way of a distribution made by; or

[(b)](ii) as consideration for the acquisition of any share in,

that company, but does not include any amount so transferred or applied [by the company] to the extent that the amount so transferred or applied—

[(i)](aa) results in a reduction of contributed tax capital of the company;

[(ii)](bb) constitutes shares in [that] the company; or

[(iii)](cc) constitutes an acquisition by [a] the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67 of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with [the] any applicable requirements prescribed by paragraphs [5.67] 5.68 and 5.72 to 5.84 of section 5 of the JSE Limited Listings Requirements; and

[(iv) constitutes a redemption of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’; or

(v) constitutes a foreign dividend;]

(b) a person holding a share in a company that is a resident, means any amount received or accrued to or in favour of that person to the extent that the amount is so received or accrued—

(i) in respect of that share;

(ii) by way of a transfer or application effected by that company as contemplated in paragraph (a);”;

- (i) by the substitution for the definition of “equity share” of the following definition:

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“**‘equity share’** means, in relation to any company, any share or similar interest in that company, excluding any share or similar interest that **[does not carry]**, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;”;

(j) by the substitution for the definition of “equity share” of the following definition:

“**‘equity share’** means, in relation to any company, any share **[or similar interest]** in that company, excluding any share **[or similar interest]** that, neither as respects dividends nor as respects returns of capital, carries any right to participate beyond a specified amount in a distribution;”;

(k) by the substitution in the definition of “financial instrument” for paragraph (a) of the following paragraph:

“(a) a loan, advance, debt, **[stock,]** bond, debenture, bill, share, promissory note, banker’s acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;”;

(l) by the substitution for the definition of “foreign partnership” of the following definition:

“**‘foreign partnership’**, in respect of any year of assessment, means any partnership, association, **[or]** body of persons or entity formed or established under the laws of any country other than the Republic if—

(a) for the purposes of the laws relating to tax on income of the country in which that partnership, association, **[or]** body of persons or entity is formed or established—

(i) each member of the partnership, association, **[or]** body of persons or entity is required to take into account the member’s interest in any amount received by or accrued to that partnership, association, **[or]** body of persons or entity when that amount is received by or accrued to the partnership, association, **[or]** body of persons or entity; and

(ii) the partnership, association, **[or]** body of persons or entity is not liable for or subject to any tax on income in that country; or

(b) where the country in which that partnership, association, **[or]** body of persons or entity is formed or established does not have any applicable laws relating to tax on income—

(i) any amount—

(aa) that is received by or accrued to; or

(bb) of expenditure that is incurred by,

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the partnership, association, **[or]** body of persons or entity is allocated concurrently with the receipt, accrual or incurral to the members of that partnership, association, **[or]** body of persons or entity in terms of an agreement between those members; and

- (ii) no amount distributed to a member of a partnership, association, **[or]** body of persons or entity may exceed the allocation contemplated in subparagraph (i) after taking into account any prior distributions made by the partnership, association, **[or]** body of persons or entity;

(m) by the insertion after the definition of “foreign partnership” of the following definition:

“**‘foreign return of capital’** means any amount that is paid or payable by a foreign company where that amount is treated as a return of capital or similar payment by that foreign company for the purposes of the laws relating to—

- (a) tax on income of the country in which that foreign company is incorporated, formed or established; or
- (b) companies of the country in which that foreign company is incorporated, formed or established, where that country does not have any applicable laws relating to tax on income;”;

(n) by the substitution in the definition of “gross income” for paragraphs (i) and (ii) following paragraphs:

- “(i) in the case of any resident, the total amount[,] (in cash or by way of partial or full relief from any liability of such resident or otherwise[,]) received by or accrued to or in favour of such resident: Provided that, where the amount is received by or accrued to or in favour of such resident by way of relief from any liability of such resident and that liability is contingent, that total amount must be limited to the fair market value of that liability; or
- (ii) in the case of any person other than a resident, the total amount[,] (in cash or by way of partial or full relief from any liability of such person or otherwise[,]) received by or accrued to or in favour of such person from a source within **[or deemed to be within]** the Republic: Provided that, where the amount is received by or accrued to or in favour of such person by way of relief from any liability of such person and that liability is contingent, that total amount must be limited to the fair market value of that liability;”;

(o) by the substitution in the definition of “gross income” for paragraph (a) of the following paragraph:

- “(a) any amount received or accrued by way of—

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- (i) annuity, including any amount contemplated in the definition of [**‘living annuity’ or the definition of]** ‘annuity amount’ in section 10A(1); or
- (ii) withdrawal from a retirement income drawdown account;”;

(p) by the substitution in paragraph (c) of the definition of “gross income” for the words preceding the proviso of the following words:

“any amount, including any voluntary award, received by or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in section 8(1)) received or accrued in respect of [**or by virtue of]** any employment or the holding of any office”;

(q) by the substitution in paragraph (cA) of the definition of “gross income” for the words following subparagraph (iv) of the following words:

“as [**compensation]** consideration for any restraint of trade imposed on such person;”;

(r) by the substitution in the definition of “gross income” for paragraph (e) of the following paragraph:

“(e) a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit other than any amount included under paragraph (eA);”;

(s) by the substitution in the definition of “gross income” for subparagraphs (i) and (ii) of paragraph (eA) of the following subparagraphs:

“(i) any amount in a fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’, the rules of which provide that on retirement of such member a portion of his or her benefit has to be taken in the form of an annuity or withdrawal from a retirement income drawdown account, has been transferred to a fund, the rules of which entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments [**and**], annuities and withdrawals from retirement income drawdown accounts); or

(ii) a fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’, the rules of which provide that on retirement of such member a portion of his or her benefit has to be taken in the form of an annuity or withdrawal from a retirement income drawdown account, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments [**and**], annuities and withdrawals from retirement income drawdown accounts); or”;

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

“any amount received or accrued from another person, as a premium or **[like]** consideration in the nature of a premium—”;

(u) by the substitution in the definition of “gross income” for paragraph (gA) of the following paragraph:

“(gA) any amount received or accrued from another person as consideration **[(or payment of like nature)]** for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;”;

(v) by the substitution in the definition of “gross income” for paragraph (jA) of the following paragraph:

“(jA) any amount received by or accrued to any person during the year of assessment **[from]** in respect of the disposal of any asset manufactured, produced, constructed or assembled by that person, which is similar to any other asset manufactured, produced, constructed or assembled by that person for purposes of manufacture, sale or exchange by that person or on that person’s behalf;”;

(w) by the substitution in the definition of “gross income” for paragraph (k) of the following paragraph:

“(k) any amount received or accrued by way of a dividend or a foreign dividend;”;

(x) by the substitution for paragraph (m) of the definition of “gross income” for the following paragraph:

“(m) any amount directly or indirectly received or accrued **[under or upon the surrender or disposal of, or]** from an insurer as defined in section 29A(1) in respect of a policy as defined in section 29A(1), including by way of any loan or advance **[granted on or after 1 July 1982 by the insurer concerned under or upon the security of, any policy of insurance upon the life of any person who, at any time while the policy was in force, was an employee of the taxpayer or, where the taxpayer is a company, was a director or employee of that company, if any premium paid in respect of such policy is or was deductible from the taxpayer’s income, whether in the current or any previous year of assessment, under the provisions of section 11]**; Provided that where—

(i) any amount so received or accrued **[under or upon the surrender or disposal of any such policy]** falls to be included in the taxpayer’s gross income, the amount

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so to be included **[in the taxpayer's gross income]** shall be reduced by the amount of any such loan or advance **[under or upon security of that policy]** which has been included in the taxpayer's gross income, whether in the current or any previous year of assessment;

[(ii) any such policy has been terminated by the insurer and a paid-up policy has been issued, the terminated policy and the paid-up policy shall for the purposes of this paragraph be deemed to be one and the same policy;

(iii) a lump sum that has been received by or has accrued to the taxpayer under or upon the surrender of disposal of such policy, the amount that falls to be included in the taxpayer's gross income shall be reduced by an amount (not exceeding such lump sum) equal to so much of the premiums paid by the taxpayer under policy as has not previously qualified for deduction from the taxpayer's income; and]

(iv) any amount in respect of a policy as contemplated in—

(aa) section 11(w) if that policy was concluded prior to 1 January 2011; or

(bb) section 11(w)(ii) if that policy was concluded on or after 1 January 2011, is received by or accrues to a person other than the taxpayer subsequent to a cession of that policy to that other person, this paragraph does not apply; and

(v) any amount is received or accrues in respect of a policy provided to a person or dependant by or in consequence of that person's membership of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, this paragraph shall not apply;”;

(y) by the substitution in the definition of “group of companies” for paragraph (b) of the following paragraph:

“(b) the controlling group company directly holds at least 70 per cent of the equity shares **[in] of** at least one controlled group company;”;

(z) by the substitution for the definition of “headquarter company” of the following definition:

“**'headquarter company'** in respect of any year of assessment means a company contemplated in section 9I(1) in respect of which an approval contemplated in section 9I(3) has been granted for that year of assessment;”;

(zA) by the deletion of the definition of “living annuity”;

(zB) by the substitution in the definition of “pension fund” for paragraph (i) of the proviso to paragraph (c) of the following paragraph:

“(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities or withdrawals from retirement income drawdown accounts for employees

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on retirement from employment or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities or withdrawals from retirement income drawdown accounts for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act, 1956 (Act No. 24 of 1956); and”;

(zC) by the substitution in the definition of “pension fund” for subparagraph (bb) of paragraph (ii) of the proviso to paragraph (c) of the following subparagraph:

“(bb) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which—

(i) the fund comes into operation; or

(ii) the employer becomes a participant in that fund;”;

(zD) by the substitution in the definition of “pension fund” for subparagraph (dd) of paragraph (ii) of the proviso to paragraph (c) of the following subparagraph:

“(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity [(including a living annuity)] or a withdrawal from a retirement income drawdown account except where two-thirds of the total value does not exceed R50 000 or where the employee is deceased;”;

(zE) by the substitution in the definition of “pension preservation fund” for the words preceding the proviso of the following words:

“ ‘**pension preservation fund**’ means a pension fund organisation which is registered under the [Pensions] Pension Funds Act, 1956 (Act No. 24 of 1956), and which is approved by the Commissioner in respect of the year of assessment in question”;

(zF) by the substitution in paragraph (a)(ii) of the proviso to the definition of “pension preservation fund” for the words preceding item (aa) of the following words:

“former members of a provident fund, a provident preservation fund or any other pension preservation fund—”;

(zG) by the substitution in paragraph (a) of the proviso to the definition of “pension preservation fund” for subparagraph (iii) of the following subparagraph:

“(iii) former members of a pension fund or nominees or dependants of that former member in respect of whom [a benefit] an ‘unclaimed benefit’ as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), is due or payable by that fund [that has not been paid within 24 months of the due date]; [or]”;

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(zH) by the substitution in paragraph (b) of the proviso to the definition of “pension preservation fund” for the words preceding subparagraph (i) of the following words:

“payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(1)(b)] 2(1)(a)(ii) or (b)** of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”;

(zI) by the substitution in the proviso to the definition of “pension preservation fund” for paragraph (e) of the following paragraph:

“(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be paid in the form of an annuity **[(including a living annuity)] or a withdrawal from a retirement income drawdown account** except where two-thirds of the total value does not exceed R50 000 or where the member is deceased”;

(zJ) by the substitution in paragraph (a) of the proviso to the definition of “provident preservation fund” for subparagraph (iii) of the following subparagraph:

“(iii) former members of a pension fund or nominees or dependants of that former member in respect of whom **[a benefit became due but has not been paid within 24 months of the due date]** an ‘unclaimed benefit’ as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), is due or payable by that fund; [or]”;

(zK) by the substitution in paragraph (b) of the proviso to the definition of “provident preservation fund” for the words preceding subparagraph (i) of the following words:

“payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph **[2(1)(b)] 2(1)(a)(ii) or (b)** of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), that is paid or transferred to the fund by—”;

(zL) by the deletion of the definition of “regional electricity distributor”;

(zM) by the substitution in the definition of “retirement annuity fund” for paragraph (a) of the proviso of the following paragraph:

“(a) that the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities or withdrawals from retirement income drawdown accounts for the members of the fund or annuities or withdrawals from retirement income drawdown accounts for the dependants or nominees of deceased members; and”;

(zN) by the substitution in the definition of “retirement annuity fund” in paragraph (b) of the proviso for subparagraphs (ii), (v), (x) and (xi) of the following subparagraphs:

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- “(ii) that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity **[(including a living annuity)]** or a withdrawal from a retirement income drawdown account except where two-thirds of the total value does not exceed R50 000 or where the member is deceased;
- (v) that no member shall become entitled to **[the] any—**
 - (aa) payment of any annuity;
 - (bb) withdrawal from a retirement income drawdown account; or
 - (cc) payment of a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule,
prior to reaching normal retirement age;
- (x) that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to—
 - (aa) an annuity, a retirement income drawdown account or a lump sum benefit contemplated in paragraph 2(1)(a) of the Second Schedule payable as from or on that date;
 - (bb) be reinstated as a full member under conditions prescribed in the rules of the fund;
 - (cc) the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member’s interest in the fund is less than an amount determined by the Minister by notice in the *Gazette*; or
 - (dd) the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control;
- (xi) that upon the winding up of the fund a member’s withdrawal interest therein must—
 - (aa) where the member received an **[annuity] amount** from the fund **[on] up to** the date upon which the fund is wound up, be used to purchase an annuity **[(including a living annuity)]** from any other fund or obtain a retirement income drawdown account; or
 - (bb) in any other case, be paid for the member’s benefit into any other retirement annuity fund;”;

(zO) by the substitution for the definition of “retirement date” of the following definition:

“**retirement date**’ means the date on which—

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(a) a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity, a withdrawal from a retirement income drawdown account or a lump sum benefit contemplated in paragraph [2(1)(a)] 2(1)(a)(i) of the Second Schedule on or subsequent to attaining normal retirement age; or

(b) a nominee or dependant of a deceased member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, in terms of the rules of that fund, becomes entitled to an annuity, a withdrawal from a retirement income drawdown account or a lump sum benefit contemplated in paragraph [2(1)(a)] 2(1)(a)(i) of the Second Schedule on the death of the member;”;

(zP) by the insertion after the definition of “retirement fund lump sum withdrawal benefit” of the following definition:

“ **‘retirement income drawdown account’** means an agreement between a member or former member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund (or his or her dependant or nominee or any subsequent nominee) and a qualifying person in terms of which the right to withdrawals from a drawdown account is provided, where—

(a) the total amount of withdrawals from that account in one year may not exceed 17,5 per cent of the value of the assets employed to determine the value of that account, which assets are derived solely from a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

(b) the value of assets contemplated in paragraph (a) is calculated at inception without regard to costs and is revised every year on the anniversary date of the inception of that agreement;

(c) the amount of the withdrawals in respect of that account is not guaranteed;

(d) the amount and frequency of the withdrawals from that account may be varied only once every year on the anniversary date of the inception of that agreement;

(e) the full remaining value of the assets may be paid as a lump sum if the value of the assets contemplated in paragraph (a) becomes at any time less than—

(i) R50 000, if any of the value of that account or any part of the retirement interest was previously commuted for a single payment; or

(ii) R75 000, in any other case;

(f) on the death of the member or former member, the value of the assets contemplated in paragraph (a) may be transferred or paid—

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- (i) to a nominee of the member or former member that is a natural person as a similar account, a lump sum or both a similar account and a lump sum;
- (ii) to a nominee of the member or former member that is not a natural person as a lump sum; or
- (iii) in the absence of a nominee, to the deceased's estate as a lump sum;
- (g) on the death of the nominee of a member or former member, the value of the assets contemplated in paragraph (a) may be transferred or paid—
 - (i) to a nominee of the deceased nominee that is a natural person as a similar account, a lump sum or both a similar account and a lump sum;
 - (ii) to a nominee of the deceased nominee that is not a natural person as a lump sum;
or
 - (iii) in the absence of a nominee, to the deceased's estate as a lump sum;
- (h) further requirements regarding the drawdown account may be prescribed by the Minister by notice in the *Gazette*;

Provided that—

- (i) where a drawdown account is transferred from one qualifying person to another qualifying person—
 - (aa) the variation of the percentage and frequency contemplated in paragraph (d) may take place on the date of that transfer and, in subsequent years, on the anniversary of the date of that transfer; and
 - (bb) a single drawdown account may not be split into two or more accounts;
- (ii) where the maximum percentage specified in paragraph (a) is adjusted, any variation of the percentage contemplated in paragraph (d) or paragraph (i) of this proviso taking place after such adjustment must take account of such adjustment; and
- (iii) any agreement concluded on or after 21 February 2007 must contain a clause providing for variations in percentage rates in accordance with paragraphs (a) and (d) and with this proviso;”;

(zQ) by the insertion after the definition of “retirement interest” of the following definition:

“ **‘return of capital’**, in relation to—

- (a) a company that is a resident, means any amount transferred by that company for the benefit or on behalf of any person in respect of any share held by that person in the company to the extent that that transfer results in a reduction of contributed tax capital of that company, whether that amount is transferred—
 - (i) by way of a distribution made by; or

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(ii) as consideration for the acquisition of any share in, that company, but does not include any amount so transferred to the extent that the amount so transferred constitutes—

(aa) shares in the company; or

(bb) an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67 of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.84 of section 5 of the JSE Limited Listings Requirements; and

(b) a person holding a share in a company that is a resident, means any amount received by or accrued to or in favour of that person to the extent that the amount is so received or accrued—

(i) in respect of that share; and

(ii) by way of a transfer effected by that company as contemplated in paragraph (a);”;

(zR) by the substitution in the definition of “severance benefit” for the words following paragraph (c)(ii) of the following words:

“unless, where the person’s employer is a company, the person at any time held more than five per cent of the issued **[share capital]** shares or members’ interest in the company”;
and

(zS) by the insertion after the definition of “severance benefit” of the following definition:

“**‘share’** means, in relation to any company, any share or similar equity interest in that company;”.

(2) Paragraphs (a), (b), (k), (n), (x) and (z) of subsection (1) come into operation on 1 January 2012.

(3) Paragraphs (c), (e), (f), (g) and (i) are deemed to have come into operation on 1 January 2011.

(4) Paragraphs (d), (h), (j), (m), (w), (y), (zL), (zQ), (zR) and (zS) come into operation on 1 April 2012.

(5) Paragraph (l) of subsection (1) is deemed to have come into operation—

(a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October 2011;

(b) in the case of any foreign partnership that is established or formed on or after 24 August 2010, as from the date of establishment or formation.

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(6) Paragraphs (o), (s), (zA), (zB), (zD), (zE), (zF), (zI), (zM), (zN), (zO) and (zP) of subsection (1) come into operation on 1 March 2012.

(7) Paragraphs (p), (q), (t), (u) and (v) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

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 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 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 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009 and section 7 of Act 7 of 2010

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

(a) by the substitution in subsection (10) for the words preceding the formula of the following words:

“Where any taxpayer’s income includes any special remuneration, or where the provisions of section 7A(4A) or paragraph 15(3), 17 or 19(1) of the First Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax (excluding tax on any lump sum benefit) payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula—”

(b) by the substitution in subsection (10) for the words preceding the formula of the following words:

“Where any taxpayer’s income includes any special remuneration, or where the provisions of [section 7A(4A) or] paragraph 15(3), 17 or 19(1) of the First Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax (excluding tax on any lump sum benefit) payable by the taxpayer in respect of such year (as determined before the deduction of any rebate) shall be determined in accordance with the formula—”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of amounts received or accrued on or after that date.

Amendment of section 6 of Act 58 of 1962, as amended by section 4 of Act 90 of 1962, section 3 of Act 6 of 1963, section 5 of Act 72 of 1963, section 8 of Act 55 of 1966, section 7 of Act 95 of 1967, section 7 of Act 76 of 1968, section 8 of Act 89 of 1969, section 7 of Act 88 of 1971, section 5 of Act 104 of 1980, section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of

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Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001, section 11 of Act 30 of 2002, section 35 of Act 12 of 2003, section 6 of Act 16 of 2004, section 3 of Act 9 of 2005, section 7 of Act 31 of 2005, section 20 of Act 9 of 2006, section 5 of Act 8 of 2007, section 1 of Act 3 of 2008, section 7 of Act 60 of 2008, section 6 of Act 17 of 2009 and section 8 of Act 7 of 2010

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

- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (a);
- (b) by the substitution in subsection (2) for the full stop at the end of paragraph (b) of the expression “; and”;
- (c) by the addition to subsection (2) of the following paragraph:

“(c) a tertiary rebate if the taxpayer was or, had he or she lived, would have been 75 years of age or older on the last day of the year of assessment, an amount of R2 000.”; and
- (d) by the substitution for subsection (5) of the following subsection:

“(5) Where the taxable income of a taxpayer consists solely of [**net remuneration**’ as **defined**] remuneration of which the full amount is subject to the Standard Income Tax on Employees contemplated in paragraph 11B of the Fourth Schedule, the [**normal**] amount of tax payable by that taxpayer—

- (a) in respect of a year of assessment commencing during the period of 12 months commencing on 1 March 2011 and ending on 29 February 2012, must be reduced by an amount equal to two-thirds; and
- (b) in respect of a year of assessment commencing during the period of 12 months commencing on 1 March 2012 and ending on 28 February 2013, must be reduced by an amount equal to one-third,

of the difference between—

- (i) the [**normal**] amount of tax that would have been payable by the taxpayer had this subsection not applied; and
- (ii) the aggregate of the Standard Income Tax on Employees payable by the taxpayer in respect of that year of assessment.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 6A in Act 58 of 1962

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10. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 6 of the following section:

“Medical tax credit

6A. (1) A rebate, to be known as the medical tax credit must be deducted from the normal tax payable by a natural person.

(2)(a) The medical tax credit applies in respect of fees paid by the person to—

(i) a medical scheme registered under the Medical Schemes Act, 1998 (Act No. 131 of 1998); or

(ii) a fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered .

(b) Subject to subsection (3), the amount of the medical scheme fees tax credit must be—

(i) R216, in respect of benefits to the person;

(ii) R432, in respect of benefits to the person and one dependant; or

(iii) R432, in respect of benefits to the person and one dependant, plus R144 in respect of benefits to each additional dependant,

for each month in which those fees are paid.

(3) If the person or his or her dependant is entitled to a rebate under section 6(2)(b) or is a person with a disability, the amount of the medical scheme fees tax credit must be the aggregate of—

(a) the amount of the medical expenses tax credit contemplated in subsection (2) in respect of that person or dependant; and

(b) R216,

for each month in which the medical scheme fees contemplated in subsection (2) are paid in respect of that person or dependant.

(4) For the purposes of this section, any amount contemplated in subsection (2) or (3) that has been paid by—

(a) the estate of a deceased person is deemed to have been paid by the person on the day before his or her death; or

(b) an employer of the person is, to the extent that the amount has been included in the income of that person as a taxable benefit in terms of the Seventh Schedule, deemed to have been paid by that person.

(6) For the purposes of this section—

(a) a ‘dependant’ in relation to a person means—

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- (i) his or her spouse;
 - (ii) his or her child and the child of his or her spouse;
 - (iii) any other member of his or her immediate family in respect of whom he or she is liable for family care and support; and
 - (iv) any other person who is recognised as a dependant of that person in terms of the rules of a medical scheme or fund contemplated in subsection (3)(a)(i) or (ii) at the time the expense was incurred;
- (b) ‘disability’ means a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if—
- (i) the limitation has lasted or has a prognosis of lasting more than a year; and
 - (ii) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.”.

(2) Subsection (1) comes into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969 and amended by section 5 of Act 94 of 1983, section 5 of Act 85 of 1987, section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009 and section 7 of Act 18 of 2009

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

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

“(1) Subject to [the provisions of] subsection (2), [a rebate determined in accordance with this section shall be deducted from the normal tax payable by] where the taxable income of any resident [in whose taxable income there is included] during a year of assessment includes—

- (a) any income received by or accrued to such resident from any source outside the Republic [(other than any foreign dividend contemplated in paragraph (d)) which is—**
 - (i) not deemed to be from a source within the Republic]; or**
- (b) any proportional amount contemplated in section 9D; or**
- [(d) any foreign dividend; or]**
- (e) any taxable capital gain contemplated in section 26A, from a source outside the Republic [which is not deemed to be from a source in the Republic]; or**

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(f) any amount—

- (i) contemplated in paragraphs (a) [, (b) or (d)] or (b) which is received by or accrued to any other person and which is deemed to have been received by or accrued to such resident in terms of section 7;
- (ii) of capital gain of any other person from a source outside the Republic [**which is not deemed to be from a source in the Republic**] and which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or
- (iii) contemplated in paragraphs (a), (b) [, (d)] or (e) which represents capital of a trust, and which is included in the income of that resident in terms of section 25B(2A) or taken into account in determining the aggregate capital gain or aggregate capital loss of that resident in terms of paragraph 80(3) of the Eighth Schedule,

there must be deducted from the normal tax payable in respect of that taxable income a rebate determined in accordance with this section.”;

(b) by the deletion in subsection (1A)(a) of subparagraph (ii);

(c) by the substitution in subsection (1B)(a) for the words preceding the proviso of the following words:

“the rebate or rebates of any tax proved to be payable as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income, proportional amount, [**foreign dividend,**] taxable capital gain or amount, as the case may be, which is included as contemplated in subsection (1), bears to the total taxable income”;

(d) by the substitution in subsection (1B) for paragraph (i) of the proviso to paragraph (a) of the following paragraph:

“(i) in determining the amount of the taxable income that is attributable to that income, proportional amount, [**foreign dividend,**] taxable capital gain or amount, any allowable deductions contemplated in sections 11(n) , 18 and 18A must be deemed to have been incurred proportionately in respect of income derived from sources within and outside the Republic;”;

(e) by the deletion in subsection (1B) of subparagraph (aa) of paragraph (iA) of the proviso;

(f) by the substitution in subsection (1B) of subparagraph (bb) of paragraph (iA) of the proviso of the following subparagraph:

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“(bb) relates to any amount contemplated in [section 9D(9)(b)(ii) or (iii)] section 9D(9A)(a) which [are] is not excluded from the application of section 9D(2) in terms of [those subparagraphs] that section or section 9D(9)(b).”;

(g) by the deletion of subsections (1C) and (1D); and

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

“(5) Notwithstanding sections 99 and 100 of the Tax Administration Act, an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be made within six years from the date of the original assessment in respect of that year.”.

(2) Paragraphs (a), (b), (c), (d), (g) and (h) of subsection (1) come into operation on 1 January 2012 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraphs (e) and (f) of subsection (1) come into operation on 1 April 2012 and apply in respect of years of assessment commencing on or after that date.

Insertion of section 6quin in Act 58 of 1962

12. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 6quat of the following section:

“Rebate in respect of foreign taxes on income from source within Republic

6quin. (1) Where—

(a) any portion of the taxable income of a resident is attributable to an amount received by or accrued to that resident in respect of any services rendered within the Republic;

(b) an amount of tax in respect of that amount is—

(i) levied by any sphere of government of any country other than the Republic; and

(ii) withheld when the amount is paid to that resident by the person making the payment,

a rebate determined in accordance with subsection (2) must be deducted from the normal tax payable by that resident.

(2) For the purposes of subsection (1), the rebate is an amount equal to the lesser of—

(a) the amount of normal tax which is attributable to the amount received or accrued as contemplated in subsection (1)(a); or

(b) the amount of tax levied and withheld as contemplated in subsection (1)(b).

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(3) Where a resident is entitled to relief by way of a deduction of a rebate in terms of this section, that relief must be regarded as being relief to which the resident is entitled in substitution for, and not in addition to, any other relief that might be available to that resident in terms of any applicable agreement for the avoidance of double taxation.

(4) For the purposes of subsection (2)(a), the amount of any tax levied and withheld as contemplated in subsection (1)(b) must be translated to the currency of the Republic on the last day of the year of assessment in which that tax is so levied and withheld by applying the average exchange rate for that year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts of tax withheld by any sphere of government of any country other than the Republic during years of assessment commencing on or after that date.

Insertion of section 6sex in Act 58 of 1962

13. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 6quin of the following section:

“Rebate in respect of dividends tax on income of foreign companies

6sex. (1) For the purposes of this section—

‘dividend’ means any dividend as defined in section 1, but does not include any dividend paid or declared by a headquarter company;

‘foreign dividend’ means any foreign dividend as defined in section 10B(1).

(2) If, during any year of assessment—

(a) (i) any dividend, foreign dividend or amount of any foreign dividend is, by virtue of section 10(1)(k)(i), 10B(5) or 22B, included in the income of a foreign company;

(ii) that foreign company is the beneficial owner, as defined in section 64D, of the share to which that dividend, foreign dividend or amount relates at the time of the inclusion contemplated in subparagraph (i); and

(iii) the dividend, foreign dividend or amount would, but for—

(aa) paragraph (ee) or (ff) of the proviso to section 10(1)(k)(i);

(bb) section 10B(5); or

(cc) section 22B,

have been exempt from tax in terms of section 10(1)(k)(i) or section 10B; or

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- (b) (i) the proceeds from the disposal by a foreign company of shares in another company are, by virtue of paragraph 43A of the Eighth Schedule, increased by an amount equal to the amount of any dividend received by or accrued to that foreign company in respect of any share held by the foreign company in that other company;
- (ii) that foreign company is the beneficial owner, as defined in section 64D, of the share contemplated in subparagraph (i) at the time of the disposal contemplated in that subparagraph; and
- (iii) there would have been no increase in proceeds as contemplated in subparagraph (i) but for paragraph 43A of the Eighth Schedule,

a rebate determined in accordance with subsection (3) must be deducted from the normal tax payable by that foreign company.

(3) For the purposes of subsection (2), the rebate is an amount equal to the dividends tax borne by the foreign company during the year of assessment or the following year of assessment which—

(a) in the case of any dividend, foreign dividend or amount contemplated in subsection (2)(a)(i), is attributable to that dividend, foreign dividend or amount; or

(b) in the case of any amount contemplated in subsection (2)(b)(i), is attributable to that amount.

(4) The determination of the rebate as contemplated in subsection (3) must be made—

(a) after taking into account any applicable agreement for the prevention of double taxation; and

(b) irrespective of whether a declaration contemplated in section 64G(3) or section 64H(3) has been submitted as contemplated in those sections in respect of the relevant dividend or foreign dividend.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation and applies in respect of—

(a) any dividend, foreign dividend or amount of foreign dividend included in income; or

(b) any dividend received by or accrued to a foreign company,

during any year of assessment commencing on or after that date.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005,

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section 8 of Act 35 of 2007, section 4 of Act 3 of 2008, section 8 of Act 60 of 2008 and section 10 of Act 17 of 2009

14. (1) Section 7 of the Income Tax Act, 1962, is hereby amended—

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

“Any income received by or accrued to any person married [**with or without**] in or out of community of property (hereinafter referred to as the recipient) shall be deemed for the purposes of this Act to be income accrued to such person’s spouse (hereinafter referred to as the donor) if—”; and

(b) by the substitution in subsection (7) for paragraph (a) of the following paragraph:

“(a) the donor’s right to receive or have paid to him or for his benefit any amount by way of rent, dividend, foreign dividend, interest, royalty or similar income in respect of any movable or immovable property (including without limiting the foregoing any lease, company share, marketable security, deposit, loan, copyright, design or trade mark) or in respect of the use of, or the granting of permission to use, such property, is ceded or otherwise made over to any other person or to a third party for that other person’s benefit in such manner that the donor remains the owner of or retains an interest in the said property or if the said property or interest is transferred, delivered or made over to the said other person or to a third party for the said other person’s benefit, in such manner that the donor is or will at a fixed or determinable time be entitled to regain ownership of or the interest in the said property; or”;

(c) by the substitution in subsection (7) for the words following paragraph (b) of the following words:

“any such rent, dividend, foreign dividend, interest, royalty or income (including any amount which, but for this subsection, would have been exempt from tax in the hands of the said other person) as is received by or accrues to or for the benefit of the said other person on or after 1 July 1983 and which would otherwise, but for the said donation, settlement or other disposition, have been received by or have accrued to or for the benefit of the donor, shall be deemed to have been received by or to have accrued to the donor.”.

(2) Paragraphs (b) and (c) of subsection (1) come into operation on 1 April 2012.

Amendment of section 7A of Act 58 of 1962, as inserted by section 6 of Act 69 of 1975 and amended by section 7 of Act 103 of 1976, section 6 of Act 96 of 1981, section 4 of Act 65 of 1986, section 8 of Act 129 of 1991, section 3 of Act 113 of 1993, section 7 of Act 21 of 1995, section 5 of Act 36 of 1996 and section 9 of Act 7 of 2010

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15. (1) Section 7A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “pension” of the following definition:

“ ‘**pension**’ means an annuity or withdrawal from a retirement income drawdown account payable under any law or under the rules of a pension fund or provident fund or by an employer to a former employee of that employer or to the dependant or nominee of a deceased person who was employed by such employer;”.

(2) Subsection (1) comes into operation on 1 March 2012 and applies in respect of amounts received or accrued on or after that date.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 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, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, section 5 of Act 3 of 2008, section 9 of Act 60 of 2008, section 11 of Act 17 of 2009 and section 10 of Act 7 of 2010

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

(a) by the substitution in subsection (1)(b)(iiiA) for item (bb) of the following item:

“(bb) in any other case—

(A) the wear and tear of that vehicle must be determined over a period of seven years from the date of original acquisition by that recipient and the cost of the vehicle must for this purpose be limited to [R400 000] R480 000, or such other amount determined by the Minister by notice in the *Gazette*; and

(B) the finance charges in respect of any debt incurred in respect of the purchase of that vehicle must be limited to an amount which would have been incurred had the original debt been [R400 000] R480 000, or such other amount determined by the Minister in terms of subitem (A);”;

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

“(a) There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), (p) and (q), section 11D(1), section 12(2) or section 12(2) as applied by section

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12(3), section 12A(3), section 13(5), or section 13(5), as applied by section 13(8), or section 13bis(7), [or] section 15(a)[,] or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment: Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been included in the gross income of such taxpayer in terms of paragraph (jA) of the definition of ‘gross income’.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 8A of Act 58 of 1962, as inserted by section 11 of Act 89 of 1969, amended by section 8 of Act 88 of 1971, section 7 of Act 32 of 2004 and section 10 of Act 31 of 2005

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

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

“(a) There shall be included in the taxpayer’s income for the year of assessment the amount of any gain made by the taxpayer after the first day of June, 1969, by the exercise, cession or release during such year of any right to acquire any marketable security (whether such right be exercised, ceded or released in [while] whole or part), if such right was obtained by the taxpayer before 26 October 2004 as a director or former director of any company or in respect of services rendered or to be rendered by him as an employee to an employer.”; and

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

“(10) For the purposes of this section ‘**marketable security**’ means any security, [stock,] debenture, share, option or other interest capable of being sold in a share-market or exchange or otherwise.”.

(2) Subsection (1) comes into operation on 1 January 2012.

Amendment of section 8B of Act 58 of 1962, as inserted by section 6 of Act 104 of 1980, and amended by section 6 of Act 121 of 1984, section 6 of Act 101 of 1990, section 8 of Act 32 of 2004, section 11 of Act 31 of 2005, section 6 of Act 20 of 2006, section 10 of Act 35 of 2007 and section 10 of Act 60 of 2008

18. (1) Section 8B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (c) of the definition of “broad-based employee share plan” of the following paragraph:

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“(c) the employees who acquire the equity shares as contemplated in paragraph (a) are entitled to all dividends and foreign dividends and full voting rights in relation to those equity shares; and”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 8C of Act 58 of 1962, as inserted by section 7 of Act 96 of 1981 and amended by section 7 of Act 121 of 1984, section 7 of Act 101 of 1990, section 8 of Act 32 of 2004, section 12 of Act 31 of 2005, section 7 of Act 20 of 2006, section 11 of Act 35 of 2007, section 11 of Act 60 of 2008 and section 12 of Act 7 of 2010

19. (1) Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) If a [**capital distribution as contemplated in paragraph 74 of the Eighth Schedule**] return of capital, other than a [**capital distribution of**] return of capital by way of a distribution of an equity instrument, is received by or accrues to a taxpayer in respect of a restricted equity instrument, the taxpayer must include the amount of the [**capital distribution**] return of capital in his or her income for the year of assessment during which the amount is received or accrues.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003, section 9 of Act 32 of 2004, section 7 of Act 8 of 2007 and section 13 of Act 7 of 2010

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

(a) by the deletion in subsection (1) of paragraph (a) of the definition of “hybrid equity instrument”;

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) and for subparagraph (i) of paragraph (b) of the definition of “hybrid equity instrument” of the following words and subparagraph:

“any share [**other than a share contemplated in paragraph (a)**], if—

(i) the holder has a right of disposal in respect of such share which may be exercised within a period of [**three**] 10 years from the date of issue thereof or at the time of issue of that share, the existence of the company issuing that share is to be terminated within a period of [**three**] 10 years or is likely to be terminated within such period upon a reasonable consideration of all the facts at the time that share is issued; and”;

(c) by the substitution in subsection (1) for the words preceding item (aa) of paragraph (b)(ii) of the definition of “hybrid equity instrument” of the following words:

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“such share does not rank *pari passu* as regards its participation in dividends or foreign dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend or foreign dividend payable on such share is to be calculated directly or indirectly with reference to—”;

(d) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “right of disposal” of the following words:

“ **‘right of disposal’** means a right which the holder of a share has to require **[any party]** the issuer of that share—”;

(e) by the substitution in subsection (1) for paragraph (b) of the definition of “right of disposal” of the following paragraph:

“(b) to procure, facilitate or assist with the redemption in whole or in part of that share or the repayment in whole or in part of the capital subscribed for that share or the conversion of that share into any other share which is redeemable in whole or in part within a period of **[three]** 10 years from the date of issue thereof.”; and

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

“(2) Any dividend or foreign dividend declared by a company on a hybrid equity instrument which is declared on or after the date that the share becomes a hybrid equity instrument shall **[for the purposes of this Act]** be deemed in relation to the recipient thereof only to be an amount of interest accrued to the recipient **[from a source within the Republic]**.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of dividends or foreign dividends declared on or after that date.

Insertion of section 8EA in Act 58 of 1962

21. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 8E of the following section:

“Dividends on third-party backed shares deemed to be interest in relation to the recipient thereof

8EA. (1) For the purposes of this section, **‘third-party backed share’** means any share—
(a) where the holder of that share has a right, whether fixed or contingent, to require any party other than the issuer of that share to acquire that share from that holder;

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- (b) in respect of which any person other than the issuer of that share has any obligation, whether fixed or contingent, to acquire that share from the holder of that share;
- (c) where the holder of that share has a right, whether fixed or contingent, to require any party other than the issuer of that share to procure, facilitate or assist with—
 - (i) the acquisition in whole or in part of that share;
 - (ii) providing any indemnification against any loss in the market value of that share; or
 - (iii) the repayment in whole or in part of any of the capital subscribed for that share;
- (d) in respect of which the holder of that share—
 - (i) has any right in terms of any guarantee, security or similar arrangement made available by any person other than the issuer of that share; or
 - (ii) is entitled to any funding, whether directly or indirectly, from any party other than the issuer of that share,
in respect of any payment attributable to that share; or
- (e) in respect of which the credit risk is determined directly or indirectly by reference to any right, obligation, guarantee, security or similar arrangement or funding contemplated in paragraphs (a) to (d).

(2) Subject to subsection (3), any dividend received by or accrued to a person in respect of a third-party backed share which is declared on or after the date that the share becomes a third-party backed share must be deemed in relation to that person only to be an amount of income received by or accrued to that person.

(3) This section must not apply to any dividend received or accrued in respect of a third-party backed share if—

- (a) that third-party backed share was issued on or before 31 May 2012;
- (b) written application is made to the Commissioner on or before 1 April 2012 for a directive that this section must not apply to that third-party backed share; and
- (c) the Commissioner, having considered the application contemplated in paragraph (b) and after consultation with the Minister, is satisfied that—
 - (i) that dividend is not directly or indirectly derived from any financial instrument in respect of which a deduction may be claimed by any person; and
 - (ii) that third-party backed share is not directly or indirectly linked to any transaction which, in the opinion of the Commissioner, erodes the tax base of the Republic.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.

Amendment of section 8F of Act 58 of 1962, as inserted by section 10 of Act 32 of 2004

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

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “hybrid debt instrument” of the following paragraph:

“(a) that instrument is at the option of the issuer convertible into or exchangeable for any share in that issuer or any connected person in relation to that issuer within **[three] 10** years from the date of issue of that instrument.”;

(b) by the substitution in subsection (1) for paragraph (d) of the definition of “hybrid debt instrument” of the following paragraph:

“(d) that instrument, other than a listed instrument issued by a listed company, is at the option of the holder convertible into or exchangeable for any share in the issuer or any connected person in relation to the issuer within **[three] 10** years from the date of issue and it is determined on the date of issue that the value of that share at the time of conversion or exchange is likely to exceed the value of the instrument by at least 20 per cent.”;

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of amounts paid or that become payable on or after that date..

Insertion of section 8G in Act 58 of 1962

23. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 8F of the following section:

“Payments in respect of perpetual instruments deemed to be dividends

8G. (1) For the purposes of this section—

‘holder’, in relation to a perpetual instrument—

(a) means any person who has become entitled to any interest or amount receivable in terms of that instrument; or

(b) at any particular time, means any person who, if any interest payable in terms of that instrument was due and payable at that time, would be entitled to receive payment of that interest;

‘interest’ means interest as defined in section 24J; and

‘issuer’, in relation to a perpetual instrument—

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(a) means any person who has incurred any interest or has any obligation to repay any amount in terms of that instrument; or

(b) at any particular time, means any person who, if any interest payable in terms of that instrument was due and payable at that time, would be liable to pay that interest;

‘perpetual instrument’ means any instrument as defined in section 24J the terms of which do not specify any date on which all liability to pay all amounts in terms of that instrument will be discharged.

(2) Where any amount is paid or incurred by an issuer in terms of a perpetual instrument after that instrument becomes a perpetual instrument—

(a) no deduction may be allowed in respect of that amount; and

(b) that amount must be deemed, both in relation to the issuer of that perpetual instrument and in relation to the holder of that perpetual instrument, to be a dividend.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of amounts paid or incurred on or after that date.

Substitution of section 9 of Act 58 of 1962

24. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 9 of the following section:

“Source of income

9. (1) An amount is received by or accrued to a person from a source within the Republic if that amount—

(a) constitutes a dividend received by or accrued to that person;

(b) constitutes interest as defined in section 24J where that interest—

(i) is attributable to an amount incurred by a person that is a resident; or

(ii) is received or accrued in respect of the utilisation or application in the Republic by any person of any funds or credit obtained in terms of any form of interest-bearing arrangement;

(c) is attributable to an amount incurred by a person that is a resident and is received or accrued in respect of—

(i) the use, right of use or permission to use any intellectual property as defined in section 23I; or

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- (ii) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information;
- (d) is received or accrued in respect of—

 - (i) the use, right of use or permission to use any intellectual property as defined in section 23I in the Republic; or
 - (ii) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information;
- (e) is received or accrued in respect of the holding of a public office to which that person has been appointed or is deemed to have been appointed in terms of an Act of Parliament, irrespective of whether or not the public office is held outside the Republic;
- (f) is received or accrued in respect of services rendered to or work or labour performed for or on behalf of any employer—

 - (i) in the national, provincial or local sphere of government of the Republic;
 - (ii) that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (iii) that is a public entity listed in Schedule 2 or Schedule 3 to that Act;
 - (iv) that is a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- (g) is received or accrued in respect of services (other than services contemplated in paragraph (f)) and those services are rendered within the Republic: Provided that if the amount is received or accrued in respect of services which were rendered partly within and partly outside the Republic, only so much of that amount as bears to the total of that amount the same ratio as the period during which the services were rendered in the Republic bears to the total period during which the services were rendered must be regarded as having been received by or accrued to the person from a source within the Republic;
- (h) that amount constitutes an amount received or accrued in respect of the disposal of an asset that constitutes immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property and that property is situated in the Republic;

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- (i) that amount constitutes an amount received or accrued in respect of the disposal of an asset other than an asset contemplated in paragraph (h) if—
- (i) that person is a resident and—
- (aa) that asset is not attributable to a permanent establishment of that person which is situated outside the Republic; and
- (bb) the proceeds from the disposal of that asset are not subject to any taxes on income payable to any sphere of government of any country other than the Republic; or
- (ii) that person is not a resident and that asset is attributable to a permanent establishment of that person which is situated in the Republic; or
- (j) constitutes any amount other than amounts contemplated in paragraphs (a) to (i) of this subsection and the originating cause of that amount is located within the Republic.
- (2) For the purposes of—
- (a) paragraphs (e), (f) and (g) of subsection (1), any amount granted to a person by way of pension, annuity or retirement income drawdown account must be deemed to have been received by or to have accrued to that person in respect of the holding of an office or in respect of services rendered by that person; and
- (b) paragraph (h) of subsection (1), an interest in immovable property held by a person includes any equity shares in a company or ownership or the right to ownership of any other entity or a vested interest in any assets of any trust, if—
- (i) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof, is attributable directly or indirectly to immovable property held otherwise than as trading stock; and
- (ii) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person) directly or indirectly holds at least 20 per cent of the equity shares in that company or ownership or right to ownership of that other entity.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.

Amendment of section 9A of Act 58 of 1962, as substituted by section 12 of Act 35 of 2007 and amended by section 6 of Act 3 of 2008

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25. (1) Section 9A of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (3) and (4) of the following subsections:

“(3) Where any amount, or any portion of any amount, of the net income of a controlled foreign company in respect of a foreign tax year of the controlled foreign company may not be remitted to the Republic for the reasons contemplated in subsection (1), there shall be allowed to be deducted from the net income of the controlled foreign company for that foreign tax year an amount equal to so much of the amount or portion which may not be remitted.

(4) The amount or portion which may not be remitted [**during the year of assessment**] as contemplated in subsection (3) shall be deemed to be an amount received by or accrued to the controlled foreign company contemplated in that subsection in the following foreign tax year of [**assessment**] the controlled foreign company.”

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008 and section 15 of Act 7 of 2010

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

(a) by the deletion in subsection (1) of the word “and” at the end of the definition of “connected person”;

(b) by the insertion in subsection (1) after the definition of “connected person” of the following definition:

“ **‘equity share’** includes a participatory interest in a portfolio of a collective investment scheme in securities;”;

(c) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “qualifying share” of the following words:

“ **‘qualifying share’**, in relation to any taxpayer, means an equity share [**contemplated in section 41**], which has been disposed of by the taxpayer or which is treated as having been disposed of by the taxpayer in terms of paragraph 12 of the Eighth Schedule, if the taxpayer immediately prior to such disposal had been the owner of that share for a continuous period of at least three years excluding a share which at any time during that period was—”;

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

“(2) Any amount other than a dividend or foreign dividend received by or accrued to a taxpayer in respect of a qualifying share shall be deemed to be of a capital nature.”.

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(e) by the substitution for subsection (2A) of the following subsection:

“(2A) Subsection (2) does not apply in respect of so much of the amount received or accrued in respect of the disposal of a qualifying share contemplated in that subsection as does not exceed the expenditure allowed in respect of that share in terms of section [12J(3)] 12J(2).”;

(f) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:

“more than 50 per cent of the market value of the equity shares [, contemplated in section 44,] of that company was attributable directly or indirectly to immovable property other than—”; and

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

“(6) Where the taxpayer holds identical shares in the same company which were acquired by the taxpayer on different dates and the taxpayer has disposed of any of those shares, the taxpayer shall for the purposes of this section be deemed to have disposed of the shares held by the taxpayer for the longest period of time.”.

(2) Paragraphs (a), (b), (c), (f) and (g) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

(3) Paragraph (d) of subsection (1) comes into operation on 1 April 2012.

(4) Paragraph (e) of subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, section 9 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009 and section 16 of Act 7 of 2010

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

(a) by the substitution in subsection (1) for the words preceding the proviso to the definition of “controlled foreign company” of the following words:

“ ‘**controlled foreign company**’ means any foreign company where more than 50 per cent of the total participation rights in that foreign company are directly or indirectly held, or more than 50 per cent of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents [**other than persons that are headquarter companies**]”;

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(b) by the substitution in subsection (1) for the words preceding the proviso to the definition of “controlled foreign company” of the following words:

“ **‘controlled foreign company’** means—

(a) any foreign company where more than 50 per cent of the total participation rights in that foreign company are directly or indirectly held, or more than 50 per cent of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents; or

(b) any foreign company that is not a controlled foreign company in terms of paragraph (a) where—

(i) a person that is a resident; or

(ii) any companies that are residents and that form part of a group of companies; is or are entitled to—

(aa) govern the financial and operating policies of that foreign company;

(bb) appoint or remove the majority of the members of the board of directors of that foreign company, the majority of some other body of persons with comparable authority or some other person with comparable authority; or

(cc) cast the majority of the votes at meetings of the board of directors of that foreign company or at meetings of some other body of persons with comparable authority”;

(c) by the insertion in subsection (1) after the definition of “foreign business establishment” of the following definition:

“ **‘foreign company’** means any—

(a) cell or segregated account contemplated in the definition of ‘protected cell company’;

(b) protected cell company to the extent that—

(i) the assets of that company are not segregated into structurally independent cells or segregated accounts as contemplated in paragraph (a) of the definition of ‘protected cell company’; and

(ii) specified assets and liabilities of that company are not linked or attributed to cells or segregated accounts as contemplated in paragraph (b) of the definition of ‘protected cell company’

(c) foreign company as defined in section 1 other than a protected cell company; or

(d) headquarter company;”;

(d) by the substitution in subsection (1) for the full-stop at the end of the definition of “participation rights” of the expression “; or”;

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(e) by the insertion in subsection (1) after the definition of “participation rights” of the following definition:

“ **‘protected cell company’** means any entity incorporated, established or formed, whether by way of conversion or otherwise, in terms of any law of any country other than the Republic where that law makes provision for—

(a) the segregation of the assets of that entity into structurally independent cells or segregated accounts;

(b) the linking or attribution of specified assets and liabilities to those cells or segregated accounts; or

(c) separate participation rights in respect of each such cell or segregated account, irrespective of whether or not that law provides that the establishment or formation of a cell or segregated account creates a legal person distinct from that entity.”;

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

“There shall be included in the income for the year of assessment of any resident (other than a resident that is a headquarter company) who—

(A) directly or indirectly holds any participation rights in a controlled foreign company that is a controlled foreign company in terms of paragraph (a) of the definition of ‘controlled foreign company’;

(B) is a person contemplated in paragraph (b)(i) of the definition of ‘controlled foreign company’; or

(C) is a company forming part of the group of companies contemplated in paragraph (b)(ii) of the definition of ‘controlled foreign company’ that has been nominated by the Commissioner for purposes of this subsection—”;

(g) by the substitution in subsection (2A) for the words preceding the proviso of the following words:

“(2A) For the purposes of this section the **‘net income’** of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of “gross income”, sections 7 (8), 10 (1) (h), 25B, 31 and paragraphs 2 (1) (a), 24, 70, 71, 72 and 80 of the Eighth Schedule”;

(h) by the substitution in subsection (2A) for the words following subparagraph (iv) of paragraph (c) of the proviso of the following words:

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“where that controlled foreign company and that other controlled foreign company form part of the same group of companies, unless **[any 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]** that interest, rental, royalty, other income, adjusted amount, exchange difference, reduction or discharge is taken into account to determine the net income of that other controlled foreign company;”;

- (i) by the deletion in subsection (2A) of paragraph (i) of the proviso;
- (j) by the substitution in subsection (6) for the words preceding the proviso of the following words:

“The net income of a controlled foreign company in respect of a foreign tax year shall be determined in the functional currency of that controlled foreign company and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, be translated to the currency of the Republic by applying the average exchange rate for that **[year of assessment]** foreign tax year”;

- (k) by the substitution in subsection (9) for the words preceding paragraph (b) of the following words:

“**[In]** Subject to subsection (9A), in determining the net income of **[the]** a controlled foreign company in terms of subsection (2A), there must not be taken into account any amount which—”;

- (l) by the substitution in subsection (9) for paragraph (b) of the following paragraph:

“(b) is attributable to any foreign business establishment of that controlled foreign company (whether or not as a result of the disposal or deemed disposal of any assets forming part of that foreign business establishment) and, in determining that amount and whether that amount is attributable to a foreign business establishment—

- (i) that foreign business establishment must be treated as if that foreign business establishment were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the controlled foreign company of which the foreign business establishment is a foreign business establishment; and
- (ii) that determination must be made as if the amount arose in the context of a transaction, operation, scheme, agreement or understanding that was entered into on the terms and conditions that would have existed had the parties to that

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transaction, operation, scheme, agreement or understanding been independent persons dealing at arm's length.”;

(m) by the substitution in subsection (9)(f) for subitem (A) of item (bb) of the following subitem:

“(A) excluded from the application of this section in terms of this paragraph or section [10(1)(k)(ii)(dd)] 10B(2)(a).”;

(n) by the deletion in subsection (9) of the proviso to paragraph (fA);

(o) by the insertion after subsection (9) of the following subsection:

“(9A)(a) Any amount which is attributable to a foreign business establishment of a controlled foreign company as contemplated in subsection (9)(b) must, notwithstanding that subsection, be taken into account in determining the net income of that controlled foreign company if that amount—

(i) is derived from the disposal of goods by that controlled foreign company where those goods will be acquired by a connected person (in relation to that controlled foreign company) who is a resident, unless—

(aa) the amount of tax payable to all spheres of government of any country other than the Republic by the controlled foreign company in respect of that amount is more than 50 per cent of the amount of normal tax that would have been payable in respect of that amount had the controlled foreign company been a resident; and

(bb) that amount is attributable to a permanent establishment of the controlled foreign company;

(ii) is derived from any service performed by that controlled foreign company to a connected person (in relation to that controlled foreign company) who is a resident, unless the service is performed outside the Republic and—

(aa) the amount of tax payable to all spheres of government of any country other than the Republic by the controlled foreign company in respect of that amount is more than 50 per cent of the amount of normal tax that would have been payable in respect of that amount had the controlled foreign company been a resident; and

(bb) that amount is attributable to a permanent establishment of the controlled foreign company;

(iii) arises in respect of a financial instrument—

(aa) unless that financial instrument is attributable to activities of that controlled foreign company that constitute the principal trading activities of the business of a bank or credit provider, other than the business of a treasury operation, that is carried on through that foreign business establishment and, for purposes of this

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item, the business of a treasury operation will be deemed to be carried on where—

(A) less of those principal trading activities are carried on in the country in which that foreign business establishment is located than in any other single country;

(B) those principal trading activities do not involve the regular and continuous acceptance of deposits or the making of loans, the issuing of letters of credit, the provision of guarantees or similar activities which are effected for the account of clients who are not connected persons in relation to that controlled foreign company; or

(C) less than 50 per cent of the amounts attributable to that foreign business establishment are derived from those principal trading activities with respect to the clients contemplated in subitem (B); or

(bb) to the extent that the total of—

(A) those amounts arising in respect of financial instruments attributable to that foreign business establishment; and

(B) amounts arising from exchange gains determined in terms of section 24I attributable to that foreign business establishment,

other than amounts in respect of which paragraphs (e) to (fB) of subsection (9) apply, does not exceed 5 per cent of the total of all amounts attributable to that foreign business establishment (other than amounts attributable to amounts contemplated in subitems (A) and (B));

(iv) arises by way of rental in respect of any movable property, unless that movable property is leased by the controlled foreign company in terms of an operating lease;

(v) arises in respect of the use, right of use or permission to use any intellectual property as defined in section 23I, unless that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount;

(vi) is a capital gain determined in respect of the disposal or deemed disposal of any intellectual property as defined in section 23I unless—

(aa) that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount; and

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- (bb) that intellectual property does not constitute property which, if that controlled foreign company were a resident, would constitute tainted intellectual property as defined in section 23I in relation to that controlled foreign company; or
- (vii) is in the form of an insurance premium, unless that amount is attributable to activities of that controlled foreign company that constitute the principal trading activities of the business of an insurer, other than the business of a captive insurer that is carried on through that foreign business establishment and, for purposes of this subparagraph, the business of a captive insurer will be deemed to be carried on where—
- (aa) less of those principal trading activities are conducted in the country in which that foreign business establishment is located than in any other single country;
- (bb) those principal trading activities do not involve the regular transaction of business as an insurer with clients who are not connected persons in relation to that controlled foreign company; or
- (cc) less than 50 per cent of the amounts attributable to that foreign business establishment are derived from those principal trading activities with respect to the clients contemplated in item (bb):

Provided that if any amount which is attributable to a foreign business establishment of a controlled foreign company as contemplated in subsection (9)(b) is, solely as a result of the application of subparagraphs (iii), (v) or (vii) of this paragraph, not taken into account in determining the net income of that controlled foreign company, that amount must be so taken into account—

- (AA) to the extent that a deduction is allowed in respect of any other amount incurred by a connected person (in relation to that controlled foreign company) who is a resident; and
- (BB) where that amount is attributable to that other amount.

(b) For the purposes of—

- (i) subparagraphs (i)(bb) and (ii)(bb) of paragraph (a), in determining whether an amount is attributable to a permanent establishment of a controlled foreign company—
- (aa) that permanent establishment must be treated as if that permanent establishment were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the controlled foreign company of which it is a permanent establishment; and
- (bb) that determination must be made as if the amount arose in the context of a transaction, operation, scheme, agreement or understanding that was entered into on the terms and conditions that would have existed had the parties to that transaction been independent persons dealing at arm's length;

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(ii) subparagraph (iv) of paragraph (a), ‘operating lease’ means a lease of movable property concluded by a lessor in the ordinary course of business of letting such property if—

(aa) such property may be hired by members of the general public directly from that lessor in terms of such a lease, for a period of less than 12 months;

(bb) the cost of maintaining such property and of carrying out repairs thereto required in consequence of normal wear and tear, is borne by the lessor; and

(cc) subject to any claim that the lessor may have against the lessee by reason of the lessee’s failure to take proper care of the property, the risk of destruction or loss of or other disadvantage to such property is not assumed by the lessee.”; and

(p) by the deletion of subsections (10), (12) and (13).

(2) Paragraphs (a), (c), (d), (e) and (j) of subsection (1) come into operation on 1 January 2012 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

(3) Paragraphs (b), (f), (g), (h), (i), (k), (l), (m), (n), (o) and (p) of subsection (1) come into operation on 1 April 2012 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

Insertion of section 9H in Act 58 of 1962

28. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 9G of the following section:

“Change of residence

9H. (1) For the purposes of this section—

‘asset’ means an asset as defined in paragraph 1 of the Eighth Schedule; and

‘market value’ in relation to an asset means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm’s length in an open market.

(2) Subject to subsection (3), where a person ceases to be a resident, that person must be treated as having—

(a) disposed of each of that person’s assets at the time of so ceasing to be a resident for an amount received or accrued equal to the market value of the asset at that time; and

(b) reacquired each of those assets immediately after having so ceased to be a resident and at an expenditure equal to the market value contemplated in paragraph (a).

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(3) Subsection (2) does not apply in respect of an asset of a person where that asset constitutes—

- (a) immovable property, or any interest or right to or in immovable property, situated in the Republic and held by that person;
- (b) any asset which will, after the person ceases to be a resident as contemplated in that subsection, be attributable to a permanent establishment of that person in the Republic;
- (c) any qualifying equity share contemplated in section 8B that was granted to that person less than five years before the date on which that person ceases to be a resident as contemplated in that subsection;
- (d) any equity instrument contemplated in section 8C, which had not yet vested as contemplated in that section at the time that the person ceases to be a resident as contemplated in that subsection; or
- (e) any right of that person to acquire any marketable security contemplated in section 8A.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Insertion of section 9I in Act 58 of 1962

29. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 9H of the following section:

“Headquarter companies

9I. (1) Any company that—

- (a) is, after taking into account any applicable agreement for the avoidance of double taxation, a resident;
- (b) complies with the requirements prescribed by subsection (2); and
- (c) has obtained the approval required in terms of subsection (3),

may apply to the Minister to be approved as a headquarter company for a year of assessment of that company in terms of subsection (3).

(2) A company complies with the requirements contemplated in subsection (1)(b) for a year of assessment of that company if—

- (a) for the duration of that year of assessment and of all previous years of assessment of the company, each shareholder in the company (whether alone or together with any other

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company forming part of the same group of companies as that shareholder) held 20 per cent or more of the equity shares and voting rights in that company;

(b) at the end of that year of assessment and of all previous years of assessment of that company, 80 per cent or more of the cost of the total assets of the company was attributable to one or more of the following:

(i) any interest in equity shares in;

(ii) any amount loaned or advanced to; or

(iii) any intellectual property as defined in section 23I(1) that is licensed by that company to,

any foreign company in which that company (whether alone or together with any other company forming part of the same group of companies as that company) held at least 20 per cent of the equity shares and voting rights: Provided that in determining the total assets of the company, there must not be taken into account any—

(aa) financial instrument with a market value equal to base cost as defined in paragraph 1 of the Eighth Schedule; or

(bb) amount in cash;

(c) 80 per cent or more of the total receipts and accruals of that company for that year of assessment consisted of amounts in the form of one or both of the following:

(i) any dividend, interest, royalty or fee paid or payable by any foreign company contemplated in paragraph (b); or

(ii) any proceeds from the disposal of any interest contemplated in paragraph (b)(i) or of any intellectual property contemplated in paragraph (b)(iii).

(3) The Minister must approve a company as a headquarter company if—

(a) that company has applied for approval; and

(b) where that company was incorporated, established or formed—

(i) before 1 January 2011, the Minister, after consultation with the Commissioner, is satisfied that the granting of the approval in respect of that company will—

(aa) enhance the status of the Republic as a destination for regional headquarter companies;

(bb) lead to the creation of additional skills or related intellectual infrastructure within the Republic; and

(cc) not lead to the erosion of the tax base of the Republic; or

(ii) on or after 1 January 2011, the Minister, after consultation with the Commissioner, is satisfied that the granting of the approval in respect of that company will not lead to the erosion of the tax base of the Republic.

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(4) An approval granted by the Minister in terms of subsection (3) is effective from the date specified by the Minister in the notice of approval issued by the Minister in respect of that approval.

(5) Where a company is approved as a headquarter company, any person that holds shares in that company must be treated as having—

(a) disposed of those shares immediately before the time of that approval for an amount equal to the market value, as defined in section 9H(1), of those shares at that time; and

(b) reacquired those shares immediately after the time of that approval and at an expenditure equal to the market value contemplated in paragraph (a).

(6) A headquarter company must submit to the Minister an annual report providing the Minister with the information that the Minister may prescribe within such time and containing such information as the Minister may prescribe.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing 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 1 of Act 49 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, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008, section 16 of Act 60 of 2008, section 13 of Act 17 of 2009 and section 18 of Act 7 of 2010

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

(a) by the substitution in subsection (1)(cA)(i) for the words preceding item (aa) 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 the Companies Act, 2008 (Act No.

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71 of 2008), any co-operative, close corporation, trust or 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—”;

(b) by the substitution in subsection (1)(cN)(ii)(dd) for subitem (ii) of the following subitem:

“(ii) **[R150 000]** R200 000;”;

(c) by the substitution in subsection (1)(cO)(iv) for item (bb) of the following item:

“(bb) **[R100 000]** R120 000;”;

(d) by the substitution in subsection (1)(e)(i) for item (bb) of the following item:

“(bb) a share block company **[established in terms of]** as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from its shareholders; or”;

(e) by the substitution in subsection (1)(e)(i)(cc) for the words preceding subitem (A) of the following words:

“any other association of persons (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or the Companies Act, 2008 (Act No. 71 of 2008), any co-operative, close corporation and trust, but including a company contemplated in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), and a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008)), from its members, where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—”;

(f) by the substitution in subsection (1)(gB)(iii) for item (B) of the following item:

“(B) does not exceed an amount of R300 000 **[less the sum of any other amounts which have been excluded from the person’s income by virtue of the exemption conferred by paragraph (x), whether in the current or any previous year of assessment]**; and”;

(g) by the addition to subsection (1)(gB) of the following subparagraph after subparagraph (iii):

“(iv) compensation paid in terms of section 17 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996);”;

(h) by the insertion in subsection (1) after paragraph (gF) of the following paragraphs:

“(gG) (i) if no amount of any premium was deductible in respect of any policy as defined in section 29A, any amount received by or accrued to a policyholder in respect of that policy;

(ii) in any other case, an amount equal to the aggregate amount of any premiums that were not deductible by a policyholder in respect of that policy;

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- (gH) (i) if no amount of any premium in respect of a policy as defined in section 29A ranked for a deduction by any taxpayer, any amount received by or accrued to any person other than the policyholder;
- (ii) in any other case, an amount equal to the aggregate of the amount of any premiums that did not rank for a deduction;
- (iii) for the purposes of paragraphs (i) and (ii), a premium paid on or after 1 January 2011 must be deemed not to have ranked for a deduction if—
- (aa) an amount equal to the amount of that premium was included in the income of any other taxpayer in respect of that premium; and
- (bb) no amount contemplated in subitem (aa) was deductible by that other taxpayer.”;
- (i) by the substitution in subsection (1)(i)(xv)(bb) for subitems (A) and (B) of the following subitems:
- “(A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of **[R32 000]** R33 000; or
- (B) in any other case, the amount of **[R22 300]** R22 800.”;
- (j) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
- “(i) in the case of any taxpayer who is a natural person, so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic as does not during the year of assessment exceed—
- (i) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of R33 000; or
- (ii) in any other case, the amount of R22 800.”;
- (k) by the substitution in subsection (1)(k)(i) for the words preceding the proviso of the following words:
- “dividends (other than **[foreign dividends or]** dividends paid or declared by a headquarter company) received by or accrued to or in favour of any person”;
- (l) by the deletion in subsection (1)(k) of paragraph (cc) of the proviso to subparagraph (i);
- (m) by the substitution in subsection (1)(k)(i) for paragraph (dd) of the proviso of the following paragraph:
- “(dd) to any dividend in respect of a restricted equity instrument as defined in section 8C, unless—
- (A) the restricted equity instrument constitutes an equity share; **[or]**
- (B) the dividend constitutes an equity instrument as defined in that section; or

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(C) the restricted equity instrument constitutes an interest in a trust, the value of which is determined by reference to an equity share, if that interest meets the requirements prescribed by the Minister by regulation;”;

(n) by the addition in subsection (1)(k) to the proviso to subparagraph (i) of the following paragraphs:

“(ee) to any dividend received by or accrued to or in favour of a person that is a company or a trust if—

(A) the share in respect of which the dividend is so received or accrues is not held by that company or trust for the period commencing immediately before the dividend is declared and ending at the close of the day on which the dividend has been received by or has accrued to the company or trust; or

(B) the share in respect of which the dividend is so received or accrues is—

(AA) held as trading stock at the time the dividend is received or accrues; and

(BB) disposed of by that company or trust within a period of 45 days after the date of that receipt or accrual, and for the purposes of this item there must not be taken into account in determining the period of 45 days any days in which the company or trust—

(AAA) has an option to sell, is under a contractual obligation to sell or has made (and not closed) a short sale of a share of the same kind and of the same or equivalent quality;

(BBB) is the grantor of an option to buy a share of the same kind and of the same or equivalent quality; or

(CCC) has otherwise diminished risk of loss in respect of that share by holding one or more contrary positions with respect to a share of the same kind and of the same or equivalent quality;

(ff) to any dividends received by or accrued to or in favour of a person that is a company in respect of a share held by that company to the extent that the aggregate of those dividends do not exceed the aggregate of any amounts incurred by that company by way of direct or indirect compensation for any distributions in respect of any share borrowed by the company where that share so borrowed constitutes an identical asset as defined in paragraph 32(2) of the Eighth Schedule in relation to the share so held; or

(gg) to any dividends received by or accrued to or in favour of a person that is a company in respect of a share borrowed by that company;”;

(o) by the deletion in subsection (1)(k) of subparagraph (ii);

(p) by the deletion in subsection (1)(t) of subparagraph (viii);

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(q) by the substitution in subsection (1)(t) for subparagraph (x) of the following subparagraph:

“(x) of the Development Bank of Southern Africa established on 23 June, 1983[.]”;

(r) by the insertion in subsection (1)(t) of the following subparagraph:

“(xvi) of—

(aa) the compensation fund established by section 15 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

(bb) the reserve fund established by section 19 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); and

(cc) a mutual association licensed in terms of section 30 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), to carry on the business of insurance of employers against their liabilities to employees, to the extent that the compensation paid by the mutual association is identical to compensation that would have been payable in similar circumstances in terms of that Act.”;

(s) by the deletion in subsection (1) of paragraph (zG); and

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

“(b) the said exemptions shall not apply in respect of any portion of an annuity or withdrawal from a retirement income drawdown account.”.

(2) Paragraphs (a), (e), (k) and (r) of subsection (1) are deemed to have come into operation on 1 January 2011.

(3) Paragraphs (b), (c), (f), (i) and (q) of subsection (1) are deemed to have come into operation on 1 March 2011 and apply in respect of amounts received or accrued on or after that date.

(4) Paragraphs (g) and (h) of subsection (1) come into operation on 1 January 2012.

(5) Paragraphs (j) and (t) of subsection (1) come into operation on 1 March 2012.

(6) Paragraphs (l) and (p) of subsection (1) come into operation on 1 April 2012.

(7) Paragraph (m) of subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

(8) Paragraph (n) of subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(9) Paragraph (o) of subsection (1) comes into operation—

(a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or special trust, on 1 March 2012 and applies in respect of years of assessment commencing on or after that date; and

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(b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or special trust, on 1 April 2012 and applies in respect of years of assessment commencing on or after that date.

(10) Paragraph (s) of subsection (1) comes into operation on 1 January 2012 and applies in respect of all receipts and accruals in respect of films of which principal photography commences on or after that date.

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995, section 11 of Act 28 of 1997, section 19 of Act 53 of 1999, section 14 of Act 59 of 2000, section 11 of Act 5 of 2001, section 15 of Act 32 of 2004, section 17 of Act 31 of 2005 and section 17 of Act 60 of 2008

31. (1) Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “annuity contract” in subsection (1) for the words following paragraph (c) of the following words:

“but does not include any agreement for—

- (i) the payment by any insurer of any annuity which is under the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund payable to a member of such fund or to any other person; or
- (ii) any withdrawal from a retirement income drawdown account;”.

(2) Subsection (1) comes into operation on 1 March 2012.

Insertion of section 10B in Act 58 of 1962

32. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 10A of the following section:

“Exemption of foreign dividends and dividends paid or declared by headquarter companies

10B. (1) For the purposes of this section, ‘**foreign dividend**’ means any—

- (a) foreign dividend as defined in section 1, other than a foreign dividend contemplated in section 64D; or
- (b) dividend paid or declared by a headquarter company.

(2) Subject to subsections (4) and (5), there must be exempt from normal tax any foreign dividend received by or accrued to a person—

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- (a) if that person (whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the total equity shares and voting rights in the company declaring the foreign dividend; or
- (b) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of that resident in terms of section 9D in any year of assessment, which relate to the net income of—
- (i) the company declaring the foreign dividend; or
- (ii) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident’s participation rights in that other company held indirectly through the company declaring the foreign dividend,
- reduced by—
- (aa) the amount of any foreign tax payable in respect of the amounts so included in that resident’s income; and
- (bb) so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in items (i) or (ii), as was—
- (A) exempt from tax in terms of this paragraph or paragraph (a); or
- (B) previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D.

(3) In addition to the exemption provided for in subsection (2) and subject to subsection (5), there must be exempt from normal tax so much of the amount of the aggregate of any foreign dividends received by or accrued to a person during a year of assessment as—

- (a) is not exempt from normal tax in terms of subsection (2) for that year of assessment; and
- (b) does not during the year of assessment exceed an amount determined in accordance with the following formula:

$$A = B \times C$$

in which formula:

- (i) ‘A’ represents the amount to be exempted for a year of assessment in terms of this paragraph;
- (ii) ‘B’ represents—
- (aa) where the person is a natural person, deceased estate, insolvent estate or special trust, the ratio of the number 30 to the number 40; or

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(bb) where the person is a person other than a natural person, deceased estate, insolvent estate or special trust, the ratio of the number 18 to the number 28; and

(iii) 'C' represents the aggregate of any foreign dividends received by or accrued to the person during a year of assessment that is not exempt from normal tax in terms of subsection (2).

(4) Subsection (2)(a) does not apply in respect of any foreign dividend received by or accrued to any person—

(a) if—

(i) (aa) any amount of that foreign dividend is determined directly or indirectly with reference to; or

(bb) that foreign dividend arises directly or indirectly from, any amount payable by any person to any other person; and

(ii) the amount so paid or payable is deductible by the person and—

(aa) is not subject to normal tax in the hands of that other person; or

(bb) where that other person is a controlled foreign company, is not taken into account in determining the net income, contemplated in section 9D(2A), of that controlled foreign company;

(b) from any portfolio contemplated in paragraph (e) of the definition of 'company' in section 1; or

(c) from any foreign financial instrument holding company as defined in section 41.

(5) Subsections (2)(a) and (3) do not apply—

(a) to any foreign dividend received by or accrued to or in favour of a person that is a company if—

(i) the share in respect of which the foreign dividend is so received or accrues is not held by that company for the period commencing immediately before the dividend is declared and ending at the close of the day on which the dividend has been received by or has accrued to the company; or

(ii) the share in respect of which the foreign dividend is so received or accrues is—

(aa) held as trading stock at the time the foreign dividend is received or accrues; and

(bb) disposed of by that company within a period of 45 days after the date of that receipt or accrual, and for the purposes of this item there must not be taken into account in determining the period of 45 days any days in which the company—

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- (A) has an option to sell, is under a contractual obligation to sell or has made (and not closed) a short sale of a share of the same kind and of the same or equivalent quality;
- (B) is the grantor of an option to buy a share of the same kind and of the same or equivalent quality; or
- (C) has otherwise diminished risk of loss in respect of that share by holding one or more contrary positions with respect to a share of the same kind and of the same or equivalent quality;

(b) to any foreign dividends received by or accrued to or in favour of a person that is a company in respect of a share held by that company to the extent that the aggregate of those foreign dividends do not exceed the aggregate of any amounts incurred by that company by way of direct or indirect compensation for any distributions in respect of any share borrowed by the company where that share so borrowed constitutes an identical asset as defined in paragraph 32(2) of the Eighth Schedule in relation to the share so held; or

(c) to any foreign dividends received by or accrued to or in favour of a person that is a company in respect of a share borrowed by that company.

(6) Subsection (2)(b) does not apply in respect of any portion of an annuity or a withdrawal from a retirement income drawdown account.

(7) The exemptions from tax provided by this section do not extend to—

(a) any payments out of any foreign dividend received or accrued to any person; or

(b) any tax leviable under this Act in respect of any taxable capital gain determined in accordance with the Eighth Schedule. ”.

(2) Subsection (1) comes into operation—

- (a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or special trust, on 1 March 2012 and applies in respect of dividends received or accrued on or after that date; and
- (b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or special trust, on 1 April 2012 and applies in respect dividends received or accrued on or after that date.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of

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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 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, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, section 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009 and section 19 of Act 7 of 2010

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

- (a) by the deletion of paragraph (bA);
- (b) by the deletion of paragraph (hA); and
- (c) by the substitution in paragraph (w)(ii) for item (dd) of the following item:

“(dd) in respect of any policy entered into on or after 1 January 2012 the taxpayer states in the policy agreement that this paragraph applies in respect of premiums payable under that policy: Provided that in respect of policies concluded before 1 January 2012, the taxpayer states in an addendum to that policy agreement by no later than 30 June 2012 that this paragraph applies in respect of premiums payable under that policy: Provided further that this paragraph applies only in respect of premiums incurred under that policy on or after 1 January 2011;”;

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.

Repeal of section 11C of Act 58 of 1962

34. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 11C.

(2) Subsection (1) comes into operation on 1 April 2012.

Substitution of section 11D of Act 58 of 1962

35. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 11D of the following section:

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“Deductions in respect of scientific or technological research and development

11D. (1) For the purposes of this section—

‘research and development’ means—

(a) systematic investigative and experimental activities of which the result is uncertain for the purpose of—

(i) discovering new non-obvious scientific or technical knowledge;

(ii) creating, developing or significantly improving—

(aa) an invention as defined in section 2 of the Patents Act, 1978 (Act No. 57 of 1978);

(bb) a design as defined in section 1 of the Designs Act, 1993 (Act No. 195 of 1993), that qualifies for registration under section 14 of that Act;

(cc) a computer program as defined in section 1 of the Copyright Act, 1978 (Act No. 98 of 1978); or

(dd) knowledge essential to the use of such invention, design or computer program; or

(b) a systematic application of scientific or technical knowledge contemplated in paragraph (a)(i), an invention, design or computer program contemplated in paragraph (a)(ii) for the creation of new assets or processes;

‘research and development facility’ means any laboratory or similar structure which is expected to be used on a regular and continuous basis, designed solely for carrying on research into or development of new scientific or technological processes or products.

(2) For the purposes of determining the taxable income of a taxpayer in respect of any year of assessment, there shall be allowed as a deduction from that income an amount equal to so much of any expenditure, other than expenditure contemplated in subsection (7), actually incurred by that taxpayer directly and solely in respect of research and development undertaken in the Republic in the case of—

(a) a taxpayer that is a company, if that expenditure incurred is in pursuance of the production of income;

(b) any taxpayer other than a company, if that expenditure is incurred —

(i) in pursuance of the production of income; and

(ii) in the carrying on of any trade.

(3) In addition to the deduction allowable in terms of subsection (2), a taxpayer that is a company may deduct an amount equal to 50 per cent of the expenditure contemplated in

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subsection (2) in respect of the research and development carried on by that taxpayer, if that research and development is—

- (a) approved by the Minister of Science and Technology in terms of subsection (8)(a); and
- (b) contracted for on or after the date of that approval.

(4)(a) In addition to the deduction allowable in terms of subsection (2), where any amount of expenditure is incurred by a taxpayer to fund expenditure of another person carrying on research and development, the taxpayer may deduct an amount equal to 50 per cent of the expenditure contemplated in subsection (2) if —

- (i) that research and development is approved by the Minister of Science and Technology in terms of subsection (8)(a); and
- (ii) that funding is contracted for on or after the date of that approval.

(b) The amount deductible in terms of paragraph (a) shall be allowed to be deducted only to the extent that the other person that carries on the research and development is—

- (i) (aa) an institution, board or body that is exempt from normal tax under section 10(1)(cA);

(bb) the Council for Scientific and Industrial Research; or

(cc) the South African Inventions Development Corporation;

- (ii) a company forming part of the same group of companies, as defined in section 41, if the company that carries on the research and development does not claim a deduction under subsection (3);

(c) Where a taxpayer funds expenditure incurred by any other person as contemplated in paragraph (b)(ii), any deduction by the taxpayer must be limited to the extent of the amount of the actual expenditure incurred directly and solely in respect of that research and development carried on by that other person.

(5) Where any government grant is received by or accrues to a taxpayer to fund expenditure in respect of any research and development, an amount equal to the amount that is funded must not be taken into account for purposes of the deduction under subsection (3) or (4).

(6) No deduction shall be allowed under subsection (2) for expenditure incurred in respect of—

(a) routine testing, analysis, the collection of information and quality control;

(b) management or internal business processes;

(c) market research, testing and sales promotion;

(d) the creation or enhancement of trademarks or goodwill;

(e) social science research, including the arts and humanities;

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- (f) oil and gas or mineral exploration or prospecting, except research and development carried on to develop technology used for that exploration or prospecting;
- (g) the creation or development of financial instruments or financial products;
- (h) the acquisition or use of pre-existing inventions, designs or computer programs;
- (i) overhead costs of research and development; or
- (j) financing and legal costs in respect of research and development.

(7) In addition to any other deductions allowable under section 12C or 13 a taxpayer may deduct an amount equal to 50 per cent in respect of the cost of any research and development facility in the year of assessment during which that research and development facility is first brought into use by the taxpayer, if that research and development facility—

- (a) is approved by the Minister of Science and Technology in terms of subsection (8)(b); and
- (b) contracted for on or after the date of that approval.

(8) The Minister of Science and Technology must approve—

- (a) any research and development being carried on or funded for the purposes of subsections (3) and (4) having regard to—

- (i) the scientific and innovative nature of the research and development;
- (ii) the extent to which the research and development will provide skills development and employment creation in the Republic; and
- (iii) the extent to which the research and development activities will provide synergies with other research and development or economic activities undertaken within the Republic,

before 1 January 2017;

- (b) a facility as a research and development facility for the purposes of subsection (7) having regard to—

- (i) the extent to which the research and development will provide skills development and employment creation in the Republic; and
- (ii) the extent to which the research and development facility will provide support to research and development or economic activities undertaken within the Republic, before 1 January 2017.

(9) The Minister of Finance in consultation with the Minister of Science and Technology must make regulations prescribing the factors to be taken into account in approving research and development under subsection (8).

(10) Within 12 months after the close of each year of assessment, starting with the year in which approval is granted in terms of subsection (8), a taxpayer conducting research and development must report to the adjudication committee established by subsection (15) with

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respect to the progress of the research and development in terms of the requirements of subsection (8) in such form and in such manner as the Minister of Science and Technology may prescribe.

(11) Where in respect of any taxpayer carrying on research and development—

- (a) during any year of assessment any material fact changes which would have had the effect that approval in terms of subsection (8) would not have been granted had such fact been known to the Minister of Science and Technology at the time of granting approval;
- (b) the taxpayer fails to submit a report to the adjudication committee as required in terms of subsection (10); or
- (c) the approval granted in terms of subsection (8) was based on fraudulent information or misrepresentation or non-disclosure of material facts.

the Minister of Science and Technology may, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of research and development with effect from a date specified by that Minister, and must inform the Commissioner of that withdrawal and of that date.

(12) The Commissioner may—

- (a) notify the Minister of Science and Technology whenever the Commissioner discovers information that may cause a withdrawal of approval in terms of subsection (8);
- (b) disallow all deductions otherwise provided for under this section starting with the date of approval if the taxpayer is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner and must notify the Minister of Science and Technology accordingly.

(13) The Commissioner may, notwithstanding the provisions of sections 79, 81(5) and 83(18), raise an additional assessment for any year of assessment where an additional allowance which has been allowed in any previous year in terms of subsection (3) or (4) must be disallowed in terms of subsection (12).

(14) Where the approval of any research and development has been withdrawn as contemplated in subsection (11), a taxpayer is in addition to any normal tax liable for an amount of additional tax not exceeding twice the difference between the tax as calculated in respect of its taxable income returned by the taxpayer and the tax properly chargeable in respect of its taxable income as determined after disallowing the deduction provided by subsection (3) or (4).

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

- (a) five persons employed by the Department of Science and Technology, appointed by the Minister of Science and Technology;

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(b) one person employed by the National Treasury; and

(c) two persons from the South African Revenue Service appointed by the Minister of Finance;

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

(16) The adjudication committee is an independent committee which must perform its functions impartially and without fear, favour or prejudice and the adjudication committee may—

(a) evaluate any application and make recommendations to the Minister of Science and Technology for purposes of the approval of any research and development in terms of subsection (8);

(b) investigate or cause to be investigated any research and development;

(c) monitor all research and development—

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

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

(d) require any taxpayer applying for approval of any research and development in terms of subsection (8) to furnish such information or documents as are necessary for the adjudication committee and Minister of Science and Technology to perform their functions in terms of this section;

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

(f) appoint its own chairperson and determine the procedures for its meetings, which procedures must be properly recorded.

(17) The members of the adjudication committee and any person whose assistance has been obtained by that committee may not—

(a) act in any way that is inconsistent with the provisions of subsection (16) or expose themselves to any situation involving the risk of a conflict between their responsibilities and private interests; or

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

(18) The Minister of Science and Technology—

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(a) must provide written reasons for any decision to grant or deny any application for approval of any research and development under subsection (8), or for any withdrawal of approval as contemplated in subsection (11);

(b) must inform the Commissioner of the approval of any research and development under subsection (8), setting out such particulars as are required by the Commissioner to determine the amount of the additional allowance allowable in terms of subsection (3) or (4).

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

(20) Every employee of the Department of Science and Technology and every member of the adjudication committee, including any person whose assistance has been obtained by that committee, must preserve and aid in preserving secrecy with regard to all matters that may come to their knowledge in the performance of their functions in terms of this section, and may not communicate any such matter to any person whatsoever other than to the taxpayer concerned or its legal representative, nor allow any such person to have access to any records in the possession or custody of that Department or committee, except in terms of the law or an order of court.

(21) Any person who contravenes the provisions of subsection (17) or (20) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of research and development undertaken on or after that date.

Insertion of section 11F in Act 58 of 1962

36. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 11E of the following section:

“Deduction of contingent liabilities discharged as part of disposal of going concern

11F. Where, in terms of any transaction, a person disposes of a business undertaking as a going concern to a purchaser and—

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- (a) that person is, in terms of that transaction, partially or fully relieved of any contingent liability of that person as a result of the assumption of that contingent liability by that purchaser;
- (b) the consideration payable by the purchaser in terms of that transaction has been determined by that person and that purchaser after taking into account the assumption of the contingent liability by that purchaser; and
- (c) the contingent liability relates to that business undertaking.
- the fair market value of that contingent liability must, on the date of that disposal and for the purposes of determining the taxable income derived by that person from carrying on a trade, be deemed to be an amount of expenditure actually incurred in the production of the income of that person derived from trade.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of disposals on or after that date.

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007, section 22 of Act 35 of 2007, section 20 of Act 60 of 2008 and section 19 of Act 17 of 2009

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

- (a) by the insertion in subsection (1) after paragraph (g) of the following paragraph:
- “(gA) any new and unused building or part thereof, machinery or plant, which is owned by a taxpayer, or acquired by a taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and is first brought into use by that taxpayer for purposes of research and development as defined in section 11D;”;
- (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
- “(h) improvement (other than repairs) to any machinery, plant, implement, utensil or article referred to in paragraph (a), (b), (c), (d) [or], (e) or (gA), which is during the year of assessment used as contemplated in that paragraph;”;
- (c) by the addition in subsection (1) to the proviso of the following paragraph:
- “(d) any new or unused machinery or plant referred to in paragraph (gA) of this subsection or improvement referred to in paragraph (h) of this subsection, is or was—
- (i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 January 2012; and

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- (ii) brought into use by the taxpayer on or after that date for the purpose of research and development as defined in section 11D,”; and
- (d) by the addition to subsection (1) of the following further proviso:
- “: Provided further that where any machinery, plant, implement, utensil, article or improvement qualifying for an allowance under this section is mounted on or affixed to any concrete or other foundation or supporting structure and the Commissioner is satisfied—
- (a) that the foundation or supporting structure is designed for such machinery, plant, implement, utensil, article or improvement and constructed in such manner that it is or should be regarded as being integrated with the machinery, plant, implement, utensil, article or improvement;
- (b) that the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto,
- the foundation or supporting structure shall be deemed to be a part of the machinery, implement, utensil, article or improvement mounted thereon or affixed thereto”.
- (2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 January 2012 and apply in respect of assets acquired or brought into use on or after that date.

Amendment of section 12E of Act 58 of 1962, as amended by section 12 of Act 19 of 2001, 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, section 14 of Act 20 of 2006, section 24 of Act 9 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009 and section 23 of Act 7 of 2010

- 38.** (1) Section 12E of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (4)(c) for subparagraph (i) of the following subparagraph:
- “(i) any income in the form of dividends, foreign dividends, royalties, rental derived in respect of immovable property, annuities or income of a similar nature;”;
- (b) by the substitution in subsection (4) for paragraph (d) of the following paragraph:
- “(d) ‘personal service’, in relation to a company, co-operative or close corporation, means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draftsmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science, if—

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- (i) that service is performed personally by any person who holds an interest in that company, co-operative or close corporation; and
- (ii) that company, co-operative or close corporation does not throughout the year of assessment employ three or more full-time employees (other than any employee who is a shareholder of the company or member of the co-operative or 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, co-operative or close corporation of rendering that service.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2012.

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 29 of Act 60 of 2001, section 22 of Act 74 of 2002 and section 27 of Act 35 of 2007

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

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

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

(b) by the substitution in the proviso to subsection (9) for the words preceding subparagraph (i) of the following words:

“Provided that where the change in material facts or failure to meet any requirement, as contemplated in paragraph (a), takes place as a result of any event which is outside the control of the company, that Minister may, taking into account the circumstances of that event[,]~~—~~”;

(c) by the substitution in subsection (13) for the proviso of the following proviso:

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

(d) by the substitution in subsection (16)(e) for subparagraph (vi) of the following subparagraph:

“(vi) any **[decisions]** decision not to withdraw the approval of a project, despite any material change in facts, as contemplated in paragraph (i) of the proviso to subsection (9).”.

(2) Subsection (1) comes into operation on 1 January 2012.

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Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009 and amended by section 25 of Act 7 of 2010

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

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “registered learnership agreement” of the following paragraph:

“(a) a contract of apprenticeship entered into before 1 October [2011] 2016 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13(2)(b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or”;

(b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “registered learnership agreement” of the following subparagraph:

“(ii) entered into between a learner and an employer before 1 October [2011] 2016.”.

Amendment of section 12I of act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009 and section 26 of Act 7 of 2010

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

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

“(a) (i) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or

(ii) 100 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within an industrial development zone; or”;

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

“(b) (i) 35 per cent of the cost of any new and unused manufacturing asset used in any **[other]** industrial policy project other than an industrial policy project with preferred status; or

(ii) 70 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within an industrial development zone,”;

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

“in the year of assessment during which that asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company,

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if that asset was acquired [**or**] and contracted for on or after the date of approval and was brought into use within four years from the date of approval.”;

(d) by the substitution for subsection (9) of the following subsection:

“(9) Notwithstanding subsection (8), the Minister of Trade and Industry may not approve any industrial project where the potential additional investment and training allowances in respect of that project and all other approved industrial projects (other than those projects where the approval thereof has been withdrawn under subsection (12)), will in the aggregate exceed R20 billion.”; and

(e) by the substitution in subsection (19)(e) for subparagraph (vi) of the following subparagraph:

“(vi) any [**decisions**] decision not to withdraw the approval of an industrial policy project, despite any material change in facts.”.

(2) Paragraphs (a), (b) and (e) of subsection (1) come into operation on 1 January 2012 and apply in respect of projects approved on or after that date.

(3) Paragraphs (c) and (d) of subsection (1) are deemed to have come into operation on 5 January 2009.

Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 and amended by section 25 of Act 17 of 2009

42. Section 12J of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the definition of “impermissible trade” of the following paragraph:

“(b) any trade carried on by a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a long-term insurer as defined in the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), a short term insurer as defined in the Short-Term Insurance Act, [**2008**] 1998 (Act No. 53 of 1998), and any trade carried on in respect of money-lending or hire-purchase financing;”;

(b) by the deletion in subsection (1) of paragraph (f) of the definition of “impermissible trade”;

(c) by the substitution in subsection (1) for paragraph (b) of the definition of “qualifying company” of the following paragraph:

“(b) the company is not a controlled group company in relation to a group of companies [**contemplated in paragraph (d)(i) of the definition of ‘connected person’**];”;

(d) by the substitution in subsection (1) for the definition of “qualifying share” of the following definition:

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“**‘qualifying share’** means an equity share held by a venture capital company which is issued to that company by a qualifying company, **[unless]** and does not include any share which—

- (a) that venture capital company has an option to dispose of [the share], or the qualifying company has an obligation to redeem [that share], for an amount other than the market value of the share at the time of that disposal or redemption; or
- (b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section;”;

(e) by the substitution in subsection (1) for the definition of “qualifying share” of the following definition:

“**‘qualifying share’** means an equity share held by a venture capital company which is issued to that company by a qualifying company, and does not include any share which—

- [(a) that venture capital company has an option to dispose of, or the qualifying company has an obligation to redeem, for an amount other than the market value of the share at the time of that disposal or redemption; or]**
- (b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the [three year] 10 year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section; or**
- (c) constitutes a third-party backed share as defined in section 8EA(1);”;**

(f) by the substitution in subsection (1) for the full stop at the end of the definition of “venture capital company” of a semicolon;

(g) by the insertion in subsection (1) of the following definition:

“**‘venture capital share’** means an equity share held by a taxpayer in a venture capital company which is issued to that taxpayer by a venture capital company, and does not include any share which—

- (a) that taxpayer has an option to dispose of, or the venture capital company has an obligation to redeem, for an amount other than the market value of the share at the time of that disposal or redemption; or
- (b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the three-year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section.”;

(h) by the substitution in subsection (1) for the definition of “venture capital share” of the following definition:

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“ ‘**venture capital share**’ means an equity share held by a taxpayer in a venture capital company which is issued to that taxpayer by a venture capital company, and does not include any share which—

[(a) that taxpayer has an option to dispose of, or the venture capital company has an obligation to redeem, for an amount other than the market value of the share at the time of that disposal or redemption; or]

(b) would have constituted a hybrid equity instrument, as defined in section 8E(1), but for the [three year] 10 year period requirement contemplated in paragraph (a) of the definition of ‘hybrid equity instrument’ in that section; or

(c) constitutes a third-party backed share as defined in section 8EA(1).”;

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

“(2) **[There]** Subject to subsections (3), (3A) and (4), there must be allowed as a deduction from the income of a [natural person, a listed company or a controlled group company in relation to a listed company as contemplated in the definition of group of companies in section 41, a deduction determined in terms of subsection (3) in respect of] taxpayer expenditure actually incurred by that [person or company] taxpayer in acquiring [shares] any venture capital share issued to that [person or company] taxpayer by a venture capital company.”;

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

“(3)(a) Where, during any year of assessment—

(i) any loan or credit has been used by a taxpayer for the payment or financing of the whole or any portion of any expenditure contemplated in subsection (2); and

(ii) any portion of that loan or credit is owed by the taxpayer on the last day of the year of assessment.

the amount which may be taken into account as expenditure that qualifies for a deduction in terms of subsection (2) must be limited to the amount for which the taxpayer is in terms of paragraph (b) deemed to be at risk on the last day of the year of assessment.

(b) For the purposes of paragraph (a), a taxpayer will be deemed to be at risk to the extent that—

(i) the incurral of the expenditure contemplated in subsection (2); or

(ii) the repayment of any loan or credit (other than any loan or credit contemplated in paragraph (i) of the proviso to this paragraph) used by the taxpayer for the payment or financing of any expenditure contemplated in subsection (2),

would (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such expenditure is incurred) result in an economic loss to the

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taxpayer were no income to be received by or accrue to the taxpayer in future years from the disposal of any venture capital share issued to the taxpayer as a result of the incurral of that expenditure: Provided that the taxpayer will not be deemed to be at risk to the extent that—

(aa) the loan or credit is not repayable within a period of five years from the date on which that loan or credit was advanced to the taxpayer; and

(bb) any loan or credit used by the taxpayer for the payment or financing of the whole or any portion of any expenditure contemplated in subsection (2) is (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such expenditure is incurred) granted directly or indirectly to the taxpayer by the venture capital company by which the qualifying shares are issued as a result of the incurral of that expenditure.”;

(k) by the insertion of the following subsection after subsection (3):

“(3A) If, during any year of assessment—

(a) a taxpayer incurs expenditure as contemplated in subsection (2); and

(b) as a result of or immediately after the acquisition of a venture capital share in a venture capital company that taxpayer is a connected person in relation to that venture capital company,

no deduction must be allowed in terms of subsection (2) during that year of assessment in respect of any expenditure incurred by the taxpayer in acquiring any venture capital share issued to that taxpayer by that venture capital company.”;

(l) by the deletion in subsection (5) of paragraphs (c), (d) and (f);

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

“(6) If the Commissioner is satisfied that any venture capital company approved in terms of subsection (5) has during a year of assessment [—

(a)] failed to comply with the provisions of that subsection [; or

(b) derived more than 20 per cent of its gross income from investment income as defined in section 12E(4)(c), other than—

(i) dividends from qualifying shares; and

(ii) proceeds derived from investment in qualifying shares],

the Commissioner must after due notice to the company withdraw that approval from the commencement of that year if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in that notice.”;

(n) by the deletion in subsection (6A) of paragraph (a);

(o) by the substitution in subsection (6A)(b) for subparagraphs (i) and (ii) of the following subparagraphs:

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- “(i) [R100 million] R300 million, where the qualifying company was a junior mining company; or
- (ii) [R10 million] R20 million, where the qualifying company was a company other than a junior mining company;” and
- (p) by the substitution in subsection (6A) for paragraph (c) of the following subparagraph:
- “(c) no more than [15] 20 per cent of the expenditure incurred by the company to acquire qualifying shares held by the company was incurred for qualifying shares issued to the company by any one qualifying company,”.
- (2) Paragraphs (a), (b), (c), (d), (f), (g), (i), (j), (k), (l), (m), (n), (o) and (p) of subsection (1) come into operation on 1 January 2012 and apply in respect of years of assessment commencing on or after that date.
- (3) Paragraphs (e) and (h) of subsection (1) come into operation on 1 April 2012.

Insertion of section 12O in Act 58 of 1962

43. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 12N of the following section:

“Exemption in respect of films

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

‘completion date’ means the date on which a qualifying film is in a form for the first time in which it can be regarded as ready for copies of it to be made and distributed, for presentation to the general public;

‘exploitation rights’ means the right to any receipts and accruals in respect of—

(a) the use of;

(b) right of use of; or

(c) the grant of permission to use,

any film to the extent that those receipts and accruals are wholly dependent on profits and losses in respect of the film ;

‘film’ means—

(a) a feature film;

(b) a documentary or documentary series; or

(c) an animation.

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conforming to the requirements stipulated by the Department of Trade and Industry in the Programme Guidelines for the South African Film and Television Production and Co-production Incentive;

‘National Film and Video Foundation’ means the National Film and Video Foundation established by the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997); and ‘special purpose corporate vehicle’ means a corporate entity responsible for the production of a film as required by the Department of Trade and Industry in terms of the Programme Guidelines for the South African Film and Television Production and Co-production Incentive.

(2) There must be exempt from normal tax the receipts and accruals in respect of income derived from the exploitation rights of a film if—

- (a) the National Film and Video Foundation has approved the film in terms of section 3(c) read with section 4(1) of the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997) as a domestic production or co-production whereby a film is co-produced in terms of a co-production agreement between a South African citizen and a citizen of any other country;
- (b) any person entitled to the receipts and accruals in respect of the exploitation rights is the same person that is entitled to those receipts and accruals at the time of the production of the film;
- (c) that income is received or has accrued to that person within a period of 10 years of the completion date; and
- (d) the completion date of that film is before 1 January 2017.

(3) No exemption shall be allowed under this section to a person that is a broadcaster as defined in section 1 of the Broadcasting Act, 1999 (Act No.4 of 1999), or any person that is a connected person in relation to that broadcaster;

- (4) (a) The special purpose corporate vehicle or the collection account manager—
- (i) that manages exploitation rights under a collection account management agreement;
 - and
 - (ii) that is approved by the Minister for the purpose of this section by notice in the *Gazette*,

must provide a report to the National Film and Video Foundation containing such information, within such time and in such manner as is prescribed by the Minister when income arising from film exploitation rights of a film is distributed to persons for a period of 10 years commencing from the completion date of the film.

(b) The National Film and Video Foundation must provide a report annually to the Minister in respect of all films approved in terms of subsection (2)(a) containing such

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information, within such time and in such manner as is prescribed by the Minister for a period of 10 years commencing from the completion date of the film if any income is received or accrues to any person which is eligible for the exemption under subsection (2).

(5) (a) In addition to the exemption under subsection (2), any amount received by or accrued to a special purpose corporate vehicle by way of a grant payable by the State under the South African Film and Television Production and Co-production Incentive administered by the Department of Trade and Industry shall be exempt from normal tax.

(b) Where a special purpose corporate vehicle that received a grant contemplated in paragraph (a) or to whom such grant has accrued, pays the whole or any portion of the amount of the grant to another person pursuant to any exploitation right in respect of that film, the exemption under this paragraph must also apply to the amount received by or accrued to that other person to the extent that the amount does not exceed any amount that the other person contributed to the production of the film.

(6) (a) Any loss incurred during any year of assessment in respect of the production of a film that is not eligible for the exemption contemplated in subsection (2) may not be set off as contemplated in section 20 against any income derived during that year of assessment other than against income derived from that film.

(b) Any balance of a loss to which paragraph (a) applies that is carried forward from the preceding year of assessment or any prior year of assessment may not be set off against any income other than against income derived from that film.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of all receipts and accruals in respect of films of which principal photography commences on or after that date.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001, section 30 of Act 60 of 2001, section 3 of Act 4 of 2008 and section 30 of Act 7 of 2010

44. (1) Section 13 of the Income Tax Act, 1962, is hereby amended—

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

“(b) any building the erection of which was commenced by the taxpayer on or after the fifteenth day of March, 1961, if such building was wholly or mainly used by the taxpayer during the year of assessment for the purpose of carrying on therein in the

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

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

“(d) any building the erection of which was commenced on or after the fifteenth day of March, 1961, if such building has been acquired by the taxpayer by purchase from any other person who was entitled to an allowance in respect thereof under paragraph (b) or this paragraph or the corresponding provisions of any previous Income Tax Act, and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture, research and development or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or”;

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

“(dA) any building that has never been used, if such building has been acquired by the taxpayer by purchase from any other person and such building was wholly or mainly used during the year of assessment by the taxpayer for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture, research and development or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid; or”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies to buildings used in research and development on or after that date.

Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008, section 29 of Act 60 of 2008, section 29 of Act 17 of 2009 and section 33 of Act 7 of 2010

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45. (1) Section 13~~quat~~ of the Income Tax Act, 1962, is hereby amended—

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

“ ‘**developer**’ means a person who[—

(a)] erects, extends, adds to or improves a building or part of a building—

(a) with the [sole] purpose of disposing of that building or part thereof immediately after completion of that erection, extension, addition or improvement; and

(b) [does not use] disposes of the building or part of a building [which is to be disposed of as contemplated in paragraph (a) for purposes of his or her trade in any other manner] within three years after completion of that erection, extension, addition or improvement;”]; and

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

“(3B) For purposes of subsection (3) or (3A), where the taxpayer purchased a building or part of a building from a developer—

(a) 55 per cent of the purchase price of that building or part of a building, in the case of a new building erected, extended or added to by that developer as contemplated in subsection (3)(a) or (3A)(a); and

(b) 30 per cent of the purchase price of that building or part of a building, in the case of a building improved by that developer as contemplated in subsection (3)(b) or (3A)(b), is deemed to be costs incurred by that taxpayer in respect of the erection, extension, addition to or improvement of that building or part of a building.”.

Amendment of section 14 of Act 58 of 1962, as amended by section 13 of Act 90 of 1962, substituted by section 19 of Act 55 of 1966, amended by section 17 of Act 85 of 1974, section 12 of Act 103 of 1976, section 11 of Act 104 of 1979, section 10 of Act 65 of 1986, section 14 of Act 21 of 1995, section 14 of Act 28 of 1997, section 23 of Act 59 of 2000 and section 14 of Act 3 of 2008

46. Section 14 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the definition of “adjustable cost” or “adjustable cost price” of the following definition:

“ ‘**adjustable cost**’ or ‘**adjustable cost price**’, in relation to any ship, means the cost to the taxpayer of such ship, or, if such ship was acquired by the taxpayer to replace a ship [**and the ship so acquired is a ship in relation to which the Commissioner is satisfied in regard to the matters in regard to which he is required to be satisfied in terms of section 8(4)(b)**], the cost to the taxpayer of the ship so acquired, less so much of any amount referred to in section

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8(4)(a) which has on or after 17 August 1966 been recovered or recouped in respect of the ship so replaced as does not exceed such cost, and ‘adjustable estimated cost price’ shall be construed accordingly;”.

Amendment of section 18 of Act 58 of 1962, as amended by section 15 of Act 95 of 1967, section 12 of Act 76 of 1968, section 17 of Act 89 of 1969, section 14 of Act 52 of 1970, section 15 of Act 88 of 1971, section 12 of Act 104 of 1980, section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995, section 23 of Act 53 of 1999, section 26 of Act 59 of 2000, section 19 of Act 30 of 2002, section 25 of Act 31 of 2005, sections 2 and 17 of Act 8 of 2007, section 30 of Act 35 of 2007, section 1 of Act 3 of 2008, section 33 of Act 60 of 2008. section 31 of Act 17 of 2009 and section 36 of Act 7 of 2010

47. (1) Section 18 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(c)(i) for items (aa), (bb) and (cc) of the following items:

“(aa) **[R670]** R720 for each month in that year in respect of which those contributions were made solely with respect to the benefits of that taxpayer;

(bb) **[R1 340]** R1 440 for each month in that year in respect of which those contributions were made with respect to the benefits of that taxpayer and one dependant; or

(cc) where those contributions are made with respect to the taxpayer and more than one dependant, the amount referred to in item (bb) in respect of the taxpayer and one dependant plus **[R410]** R440 for every additional dependant for each month in that year in respect of which those contributions were made; and”;

(b) by the deletion in subsection (4) of the proviso.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970, substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 34 of Act 60 of 2008 and section 37 of Act 7 of 2010

48. (1) Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following paragraph (c) of the following words:

“as does not exceed—

(A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

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$$A = B \times 0.005$$

in which formula:

(AA) 'A' represents the amount to be determined;

(BB) 'B' represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or

(B) in any other case, ten [percent] per cent of the taxable income (excluding any retirement fund lump sum benefit and retirement fund lump sum withdrawal benefit) of the taxpayer as calculated before allowing any deduction under this section or section 18.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts paid or transferred during years of assessment commencing on or after that date.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008 and section 39 of Act 7 of 2010

49. (1) Section 22 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (3)(a)(iii) for items (aa) and (bb) of the following items:

“(aa) a right in a controlled foreign company held directly by a resident, include an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of **[section 10(1)(k)(ii)(cc)]** section 10B(2)(a); or

(bb) a right in a controlled foreign company held directly by another controlled foreign company, include an amount equal to the proportional amount of the net income

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(without having regard to the percentage adjustments contemplated in paragraph 10 of the Eighth Schedule) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, less the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section ~~[10(1)(k)(ii)(cc)]~~ section 10B(2)(a) had that second-mentioned controlled foreign company been a resident;” and

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

“(iv) include the fair market value of any contingent liability that—

(aa) is assumed by that person as part of the acquisition of that trading stock; and

(bb) relates to that trading stock,

to the extent of that assumption.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 April 2012 and applies in respect of trading stock acquired during years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2012 and applies in respect of trading stock acquired during years of assessment commencing on or after that date.

Substitution of section 22B of Act 58 of 1962

50. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 22B of the following section:

“Dividends treated as income on disposal of certain shares

22B. (1) Where a taxpayer that is a company disposes of shares in another company, the amount of any dividend received by or accrued to the taxpayer in respect of any share held by the taxpayer in that other company must be included in the income of the taxpayer—

(a) to the extent that the dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;

(b) if the taxpayer immediately before the disposal—

(i) held the shares disposed of as trading stock; and

(ii) held more than 50 per cent of the equity shares in the other company; and

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(c) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, obtained any loan or advance or incurred any debt by reason of or in consequence of the disposal—

(i) owing to the person acquiring the shares or any connected person in relation to that person; or

(ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.

(2) For the purposes of subsection (1), the amount that must be included in the income of the taxpayer is limited to the amount of the loan, advance or debt contemplated in paragraph (c) of that subsection.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

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, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006, section 20 of Act 8 of 2007, section 37 of Act 60 of 2008 and section 41 of Act 7 of 2010

51. (1) Section 23 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in paragraph (m)(iii) for the words preceding item (aa) of the following words:

“any deduction which is allowable under section 11(a) in respect of any premium paid by that person or any contribution or payment made by the employer in terms of an insurance policy, to the extent that—”;

(b) by the substitution for the full stop at the end of paragraph (q) of a semi-colon; and

(c) by the addition of the following paragraph:

“(r) any expenditure incurred in the production of income in the form of foreign dividends.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of premiums incurred on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation—

(a) insofar as they apply to any person that is a natural person, deceased estate, insolvent estate or special trust, on 1 March 2012 and apply in respect of years of assessment commencing on or after that date; and

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- (b) insofar as they apply to any person that is a person other than a natural person, deceased estate, insolvent estate or special trust, on 1 April 2012 and apply in respect of years of assessment commencing on or after that date.

Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991 and amended by section 16 of Act 21 of 1994, section 29 of Act 30 of 2000, section 39 of Act 45 of 2003, section 18 of Act 20 of 2006 and section 42 of Act 7 of 2010

52. (1) Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

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

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of expenditure incurred on or after that date.

Insertion of section 24CA in Act 58 of 1962

53. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24C of the following section:

“Inclusion and allowance in respect of contingent liabilities assumed as part of acquisition of going concern

24CA. (1) Where, in terms of any transaction, a person acquires a business undertaking as a going concern from a seller and—

(a) that seller is, in terms of that transaction, partially or fully relieved of any contingent liability of that seller as a result of the assumption of that contingent liability by that person;

(b) the consideration payable by the person in terms of that transaction has been determined by that seller and that person after taking into account the assumption of the contingent liability by that person;

(c) the contingent liability relates to that business undertaking.

the fair market value of that contingent liability must be included in the income of that person for the year of assessment during which that disposal is made.

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(2) Where, during any year of assessment, an amount is included in the income of a person in terms of subsection (1) by virtue of the assumption by that person of a contingent liability as contemplated in that subsection, any expenditure of that person in respect of that contingent liability that is likely to be incurred by that person in a future year of assessment must be allowed as a deduction for the year of assessment in which it is so included if, but for the contingency, it would have been allowed as a deduction in that year of assessment.

(3) The amount that is allowed as a deduction from the income of a person in any year of assessment in terms of subsection (2) must be deemed to be an amount received by or accrued to that person in the following year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of acquisitions made during years of assessment commencing on or after that date.

Repeal of section 24F of Act 58 of 1962

54. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 24F.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of films of which principal photography commences on or after that date.

Amendment of section 24H of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 and amended by section 26 of Act 74 of 2004 and section 46 of Act 7 of 2010

55. (1) Section 24H of the Income Tax Act, 1962, is hereby amended by the addition to subsection (2) of the following proviso:

“: Provided that this subsection shall not apply to any member of a partnership that is a qualifying investor”.

(2) Subsection (1) comes into operation—

- (a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October 2011;
- (b) in the case of any foreign partnership that is established or formed on or after 24 August 2010, as from the date of establishment or formation.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 and amended by section 21 of Act 113 of 1993, section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006, section 23 of Act 8 of 2007, section 40 of Act 35 of 2007, section 20 of Act 3 of 2008 and section 47 of Act 7 of 2010

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

- (a) by the deletion in subsection (1) of the definition of “affected contract”;
- (b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “ruling exchange rate” of the following subparagraph:
- “(ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract **[or in respect of a forward exchange contract which is an affected contract, the forward rate in terms of such forward exchange contract];**”;
- (c) by the substitution in subsection (1) for item (aa) of paragraph (c)(ii) of the definition of “ruling exchange rate” of the following subparagraph:
- “(aa) **[in relation to a foreign currency option contract which is not an affected contract,]** the rate obtained by dividing the market value of such foreign currency option contract on that date by the foreign currency amount as specified in such foreign currency option contract; or”;
- (d) by the deletion in subsection (1) of item (bb) of paragraph (c)(ii) of the definition of “ruling exchange rate”;
- (e) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs:
- “(b) trust **[carrying on any trade] other than a special trust;**
- (c) natural person or special trust who holds any amount contemplated in paragraph (a) or (b) of the definition of ‘exchange item’ as trading stock; and”;
- (f) by the deletion of subsection (7);
- (g) by the substitution in subsection (11) for paragraphs (a) and (b) of the following paragraph:
- “(a) any amount owing by a person in respect of a loan, advance or debt incurred by that person in foreign currency to—
- (i) acquire any asset, other than an asset—
- [(i)](aa)** which constitutes an exchange item;
- [(ii)](bb)** the currency of expenditure of which is denominated in the local currency of that person;
- [(iii)](cc)** in respect of which the provisions of section 9G or paragraph 43(4) of the Eighth Schedule would apply had that asset been disposed of, regardless of whether or not that asset constitutes trading stock; **[and]**
- (ii) instal, erect or construct any machinery, plant, implement, utensil, building or improvements to any building;

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(iii) devise, develop, create, produce, acquire or restore any invention, patent, design, trade mark, copyright or other knowledge contemplated in section 11(gA) or (gC);

(b) any forward exchange contract or foreign currency option contract entered into to hedge **[such]** a loan, advance or debt contemplated in paragraph (a) to the extent that the forward exchange contract or foreign currency option contract is entered into to hedge the loan, advance or debt.”; and

(h) by the substitution for subsection (11A) of the following subsection:

“(11A) **[An]** No amount shall **[not]** be included in or deducted from the income of a **[resident] person** in terms of this section in respect of any exchange difference arising from any forward exchange contract or foreign currency option contract or premium in respect of any foreign currency option contract entered into by that **[resident] person** to hedge the purchase price in respect of the acquisition of the equity shares of a company by that **[resident] person**, or by any other **[resident] person** forming part of the same group of companies as that **[resident] person**, to the extent that—

(a) **[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 will, after that acquisition, be held by that person or that other person, as the case may be; and

[(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] person**, that amount is not included in the income statement of that **[resident] person** utilised for financial reporting purposes pursuant to International Financial Reporting Standards[,]; or

(ii) in the case of an acquisition by another **[resident] person** forming part of the same group of companies as that **[resident] person**, that amount is not included in the consolidated income statement forming part of the annual financial statements of a group for purposes of financial reporting pursuant to International Financial Reporting Standards or South African Statements of Generally Accepted Accounting Practice in terms of which the aforementioned **[residents] persons** are viewed as part of that group for purposes of those Standards or Statements.”.

(2) Paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (1) come into operation on 1 January 2012 and apply in respect of years of assessment commencing on or after that date.

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(3) Paragraph (e) of subsection (1) comes into operation on 1 March 2012 and applies in respect of years of assessment commencing 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, section 10 of Act 9 of 2005 and section 20 of Act 20 of 2006

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

(a) by the insertion in subsection (1) of the following definition after the definition of “alternative method”:

“ **‘date of redemption’**, in relation to an instrument other than a demand instrument, means—

(a) where—

- (i) the terms of that instrument specify a date on which all liability to pay all amounts in terms of that instrument will be discharged; and
- (ii) the date so specified is not, in terms of the instrument, subject to change, whether as a result of any right, fixed or contingent, of the holder of that instrument or otherwise,

that date; or

(b) where—

- (i) the terms of that instrument do not specify a date as contemplated in paragraph (a)(i); or
- (ii) that date, if so specified, is not subject to change as contemplated in paragraph (a)(ii),

the date on which, on a balance of probabilities, all liability to pay all amounts in terms of that instrument is likely to be discharged;”;

(b) by the insertion in subsection (1) of the following definition after the definition of “deferred interest”:

“ **‘demand instrument’** means any instrument where the holder of that instrument has, at any time during a year of assessment, a right to require the redemption of that instrument at any time before the date specified in terms of that instrument as the date of redemption of that instrument.”;

(c) by the substitution in subsection (1) for paragraph (a) of the definition of “instrument” of the following paragraph:

“(a) any [stock,] bond, debenture, bill, promissory note, certificate or similar arrangement;”;

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(d) by the addition in subsection (1) to the definition of “interest” of the following paragraph:

“(d) amount of any receipt or accrual in respect of an interest in an asset as contemplated in the definition of ‘sukuk’ in section 24JA(1) other than any receipt or accrual in relation to the disposal of any interest in that asset;”; and

(e) by the substitution in subsection (1) for the definition of “term” of the following definition:

“ ‘term’, in relation to—

(a) a demand instrument, means a period of 365 days commencing on the date of transfer or issue of that instrument; or

(b) an instrument other than a demand instrument, means the period commencing on the date of issue or transfer of that instrument and ending on the date of redemption of that instrument.”

(2) Paragraphs (a), (b) and (e) of subsection (1) come into operation on 1 April 2012 and apply in respect of amounts received by or accrued to or incurred by any person during years of assessment commencing on or after that date.

(3) Paragraph (d) of subsection (1) comes into operation on 1 January 2012 and applies in respect of sharia arrangements entered into on or after that date.

Amendment of section 24JA of Act 58 of 1962, as inserted by section 48 of Act 7 of 2010

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

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

“[(a)] a [bank] financier and a client of that [bank] financier, one of which is a bank whereby—

[(i)](a) the [bank] financier will acquire an asset from a third party (the seller) for the benefit of the client on such terms and conditions as are agreed upon between the client and the seller; and

[(ii)](b) the client—

[(aa)] (i) will acquire the asset from the [bank] financier within 30 days after the acquisition of the asset by the [bank] financier contemplated in subparagraph (i); and

[(bb)] (ii) agrees to pay to the [bank] financier a total amount that—

[(A)](aa) exceeds the amount payable by the [bank] financier to the seller as consideration to acquire the asset;

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[(B)](bb) is calculated with reference to the consideration payable by the **[bank] financier** to the seller in combination with the duration of the sharia arrangement; and

[(C)](cc) may not exceed the amount agreed upon between the **[bank] financier** and the client when the sharia arrangement is entered into;”;

- (b) by the deletion in subsection (1) of paragraph (b) of the definition of “murabaha”;
- (c) by the insertion in subsection (1) after the definition of “sharia arrangement” of the following definition:

“ **‘sukuk’** means a shariah arrangement whereby—

(a) the Government of the Republic disposes of an interest in an asset to a trust; and

(b) the disposal of the interest in the asset to the trust by the Government of the Republic is subject to an agreement in terms of which the Government of the Republic undertakes to reacquire on a future date from that trust the interest in the asset disposed of.”;

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

“(3) Where any murabaha is entered into between a **[bank] financier** and a client of that **[bank] financier** as contemplated in paragraph (a) of the definition of ‘murabaha’—

(a) the **[bank] financier** is deemed not to have acquired or disposed of the asset under the sharia arrangement;

(b) the client is deemed to have acquired the asset from the seller —

(i) for consideration equal to the amount paid by the **[bank] financier** to the seller; and

(ii) at such time as the **[bank] financier** acquired the asset from the seller by virtue of the transaction between the seller and **[bank] financier**;

(c) the murabaha is deemed to be an instrument for the purposes of section 24J;

(d) the difference between the amount of consideration paid for the asset by **[bank] financier** to the seller and the consideration payable to the **[bank] financier** by the client to acquire the asset as contemplated in paragraph (a)(ii)(bb) of the definition of ‘murabaha’ is deemed to be a premium paid for the purposes of section 24J; and

(e) the amount of consideration paid by **[bank] financier** to acquire the asset as contemplated in paragraph (a)(i) of the definition of ‘murabaha’ is deemed to be an issue price for the purposes of section 24J.”

- (e) by the deletion of subsection (4).

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.”.

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Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010

59. (1) Section 25BA of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the following paragraph—

“(b) to the extent that the amount is not distributed as contemplated in paragraph (a) within 12 months of its receipt by that portfolio[,]—

(i) be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its receipt by that portfolio; and

(ii) to the extent that the amount is attributable to a dividend received by or accrued to that portfolio, be deemed to be income of that portfolio.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts received or accrued to a portfolio of a collective investment scheme during years of assessment of the portfolio commencing on or after that date.

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, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006, section 21 of Act 3 of 2008 and section 52 of Act 7 of 2010

60. Section 29A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(a) for subparagraph (iii) of the following subparagraph:

“(iii) any [**annuity**] contracts entered into by it in respect of which annuities or withdrawals from retirement income drawdown accounts are being paid;”.

Amendment of section 30B of Act 58 of 1962, as inserted by section 55 of Act 7 of 2010

61. (1) Section 30B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“**[The]** Subject to subsections (3) and (4) the Commissioner must approve an entity for the purposes of section 10(1)(d)(iii) or (iv) if—”.

(2) Subsection (1) is deemed to have come into operation on 31 October 2010.

Substitution of section 31 of Act 58 of 1962

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62. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 31 of the following section:

“Tax payable in respect of international transactions to be based on arm’s length principle

31. (1) For the purposes of this section—

‘financial assistance’ includes the provision of any—

(a) loan, advance or debt; or

(b) security or guarantee; and

‘affected transaction’ means any transaction, operation, scheme, agreement or understanding where—

(a) that transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected between or for the benefit of either or both—

(i) (aa) a person that is a resident; and

(bb) any other person that is not a resident;

(ii) (aa) a person that is not a resident; and

(bb) any other person that is not a resident that has a permanent establishment in the Republic to which the transaction, operation, scheme, agreement or understanding relates;

(iii) (aa) a person that is a resident; and

(bb) any other person that is a resident that has a permanent establishment outside the Republic to which the transaction, operation, scheme, agreement or understanding relates;

(iv) (aa) a person that is not a resident; and

(bb) any other person that is a controlled foreign company in relation to any resident,

and those persons are connected persons in relation to one another; and

(b) any term or condition of that transaction, operation, scheme, agreement or understanding is different from any term or condition that would have existed had those persons been independent persons dealing at arm’s length.

(2) Where—

(a) any transaction, operation, scheme, agreement or understanding constitutes an affected transaction; and

(b) any term or condition of that transaction, operation, scheme, agreement or understanding—

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(i) is a term or condition contemplated in paragraph (b) of the definition of ‘affected transaction’; and

(ii) results or will result in any tax benefit being derived by a person that—

(aa) is a party to that transaction, operation, scheme, agreement or understanding; or

(bb) holds any interest in a person contemplated in item (aa),

the taxable income or tax payable by any person contemplated in paragraph (b)(ii) that derives a tax benefit contemplated in that paragraph must be calculated as if that transaction, operation, scheme, agreement or understanding had been entered into on the terms and conditions that would have existed had those persons been independent persons dealing at arm’s length.

(3) To the extent that there is a difference between—

(a) any amount that is, after taking subsection (2) into account, applied in the calculation of the taxable income of any resident that is a party to an affected transaction; and

(b) any amount that would, but for subsection (2), have been applied in the calculation of the taxable income of the resident contemplated in paragraph (a).

the Commissioner may deem the amount of that difference to be a dividend for the purposes of section 64D.

(4) For the purposes of subsection (2), where any transaction, operation, scheme, agreement or understanding has been directly or indirectly entered into or effected as contemplated in that subsection in respect of—

(a) the granting of any financial assistance; or

(b) intellectual property as contemplated in the definition of ‘intellectual property’ in section 23I(1) or knowledge,

‘connected person’ means a connected person as defined in section 1:

Provided that the expression ‘and no shareholder holds the majority voting rights in the company’ in paragraph (d)(v) of that definition must be disregarded.

(5) Where any transaction, operation, scheme, agreement or understanding has been entered into between a headquarter company and—

(a) any other person that is not a resident and that transaction, operation, scheme, agreement or understanding is in respect of the granting of financial assistance by that other person to that headquarter company, this section does not apply to so much of that financial assistance that is directly applied as financial assistance to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights; or

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(b) any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting of financial assistance by that headquarter company to that foreign company, this section does not apply to that financial assistance.”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994, section 39 of Act 59 of 2000, section 32 of Act 74 of 2002, section 48 of Act 45 of 2003, section 4 of Act 32 of 2005 and section 45 of Act 35 of 2007

63. (1) Section 35 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1)(a) Subject to paragraph (b), there must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated at the rate of 12 per cent of any amount contemplated in section 9(1)(c) or (d) that is received by or accrues to a person (other than a resident or a controlled foreign company).

(b) Paragraph (a) does not apply in respect of any amount which is received by or accrues to any person who is not a resident, if such amount is effectively connected with a permanent establishment of that person in the Republic.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005 and section 3 of Act 61 of 2008

64. (1) Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If an amount has been withheld in terms of subsection (1) from any amount payable in a foreign currency, that amount so withheld must be translated to the currency of the Republic at the spot rate on the date that the amount is paid to the Commissioner.”.

(2) Subsection (1) comes into operation on 1 January 2012.

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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, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008, section 43 of Act 17 of 2009 and section 57 of Act 7 of 2010

65. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7G)(b) for subparagraph (ii) of the following subparagraph:

“(ii) if the taxpayer is a company and its acquisition of the right to mine or the mineral rights in respect of such mine was financed wholly or partly by the issue of any share in respect of which any dividend or foreign dividend is to be calculated with reference to that portion of the company’s profits which is attributable to such mine.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 37J of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010

66. (1) Section 37J of the Income Tax Act, 1962, is hereby amended—

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

“(1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on interest, calculated at the rate of 10 per cent of the amount of any interest that is regarded as having been received or accrued from a source within the Republic in terms of section 9(1)(b) received by or accrued to any foreign person that is not a controlled foreign company.”; and

(b) by the deletion of subsection (2).

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Insertion of section 37JA in Act 58 of 1962

67. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 37J of the following section:

“Liability for tax

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37JA. A foreign person to which an amount of interest is paid or accrues is liable for the withholding tax on interest.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Amendment of section 37K of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010

68. (1) Section 37K of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1)(a) of subparagraph (v);
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 - “(c) that is deemed to have accrued to any **[non-resident]** foreign person in terms of section 25BA(a).”;
- (c) by the deletion in subsection (3) of the word “or” at the end of paragraph (a);
- (d) by the substitution in subsection (3) for the period of the expression “; or” at the end of paragraph (b); and
- (e) by the addition to subsection (3) after paragraph (b) of the following paragraph:
 - “(c) is a controlled foreign company as defined in section 9D.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Amendment of section 37L of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010

69. (1) Section 37L of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (2).

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Insertion of section 37M in Act 58 of 1962

70. The Income Tax Act, 1962, is hereby amended by the insertion after section 37L of the following section:

“Payment and recovery of tax

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37M. (1) If, in terms of section 37JA, a foreign person is liable for any amount of withholding tax on interest in respect of any amount of interest that is paid or that accrues to the foreign person, that foreign person must pay that of withholding tax by the last day of the month following the month during which the interest is paid, unless the tax has been paid by any other person.

(2) Any person that withholds any withholding tax on interest in terms of section 37L must pay the tax to the Commissioner by the last day of the month following the month during which the interest is paid.

(3) Any person that fails to withhold tax as required in terms of section 37L or withholds tax but fails to pay the tax to the Commissioner as required by subsection (2) is liable for the payment of the tax as if it were tax due by that person in terms of this Act, unless the tax is paid by any other person.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Insertion of section 37N in Act 58 of 1962

71. The Income Tax Act, 1962, is hereby amended by the insertion after section 37M of the following section:

“Refund of withholding tax on interest

37N. (1) Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—
(a) an amount is withheld from the payment of interest in terms of section 37L(1);
(b) a declaration contemplated in section 37L(3)(b) or (4) in respect of that interest is not submitted to the person paying that interest by the date of the payment of that interest; and
(c) a declaration contemplated in section 37L(3)(b) or (4) is submitted to the person paying that interest within three years after the payment of the interest in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable to the person to whom the interest was paid.

(2) Subject to subsection (3), if any amount is refundable to any person in terms of subsection (1) the person to whom the interest was paid as contemplated in subsection (1) may recover the refundable amount from the Commissioner.

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(3) No amount may be recovered in terms of subsection (2) if the person to whom the interest was paid submits the claim for recovery to the Commissioner after the expiry of a period of three years reckoned from the date of the payment of interest contemplated in subsection (1)(a).”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of any interest that accrues on or after that date.

Amendment of section 41 of Act 58 of 1962, as 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, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, section 32 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, section 128 of Act 60 of 2008, section 47 of Act 17 of 2009 and section 61 of Act 7 of 2010

72. (1) Section 41 of the Income Tax Act, 1962, is hereby amended—

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

“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 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.”;

(b) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph:

“(i) that company has lodged a resolution authorising the voluntary **[liquidation or]** winding-up of that company**[, for registration]** in terms of—

(aa) section **[200] 80(2)** of the Companies Act, **[1973] 2008** (Act No. **[61] 71** of **[1973] 2008**), in the case of a company **[registered in terms of that Act]** to which that section applies;

(bb) **[section 67(2) of the Close Corporations Act, 1984 (Act No. 69 of 1984), in the case of a close corporation]** Regulation 21 of the Regulations under the Co-operatives Act, 2005 (Act No. 14 of 2005), published under section 95 of that Act in Government Notice R. 366 of 30 April 2007, in the case of a co-operative;
or

(cc) a similar provision contained in any foreign law relating to the liquidation of companies, in the case where that company is incorporated in a country other than the Republic, if such foreign law so requires; and”;

(c) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs:

“(b) in the case of a deregistration of a company, that company has **[submitted a written statement signed by each of its directors confirming that the company has ceased**

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to carry on business and has no assets or liabilities] lodged a request for the deregistration of that company in the prescribed manner and form—

(i) to the [**Registrar of Companies**] Companies and Intellectual Property Commission in terms of section [**73(5)**] 82(3)(b)(ii) of the Companies Act, [**1973**] 2008, in the case of a company [**registered in terms of that Act**] to which that section applies; or

[(ii) to the Registrar of Close Corporations in terms of section 26 (2) of the Close Corporations Act, 1984, in the case of a close corporation; or]

(iii) in the case where that company is incorporated in a country other than the Republic, to a person who, in terms of any similar provision contained in any foreign law, exercises the powers and performs the duties assigned to a [**Registrar**] Commission contemplated in subparagraph (i) [**or (ii)**], if such foreign law so requires;

(c) that company has submitted a copy of the resolution contemplated in paragraph (a)(i) or the [**written statement**] request contemplated in paragraph (b) to the Commissioner; and”;

(d) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) This subsection applies where a [**capital distribution**] return of capital in respect of any share as contemplated in paragraph 76(1)(b) of the Eighth Schedule has been received by or has accrued to any person, and that person has disposed of that share, after that receipt or accrual, in terms of a disposal or distribution in respect of which the provisions of sections 42, 44, 45 or 47 apply.”; and

(e) by the substitution in subsection (8)(b) for the words preceding subparagraph (i) of the following words:

“Where paragraph (a) applies, that [**capital distribution**] return of capital must for purposes of paragraph 76(1)(b) of the Eighth Schedule be deemed to have been received by or to have accrued to—”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 21 October 2008 and applies in respect of shares or debt instruments acquired, issued or disposed of on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 January 2011.

(4) Paragraphs (d) and (e) of subsection (1) come into operation on 1 April 2012.

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Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009 and section 62 of Act 7 of 2010

73. (1) Section 42 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of “asset-for-share transaction” of the following definition:

“ ‘asset-for-share transaction’ means any transaction—

(a) (i) in terms of which a person disposes of an asset (other than an asset which constitutes a restraint of trade or personal goodwill), the market value of which is equal to or exceeds—

[(i)](aa) in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or

[(ii)](bb) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2),

to a company which is a resident, in exchange for an equity share or shares of that company and that person—

[(aa)](A) at the close of the day on which that asset is disposed of, holds a qualifying interest in that company; or

[(bb)](B) is a natural person who will be engaged on a full-time basis in the business of that company, or a controlled group company in relation to that company, of rendering a service; and

[(b)] (ii) as a result of which that company acquires that asset from that person—

[(i)](aa) as trading stock, where that person holds it as trading stock;

[(ii)](bb) as a capital asset, where that person holds it as a capital asset; or

[(iii)](cc) as trading stock, where that person holds it as a capital asset and that company and that person do not form part of the same group of companies:

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Provided that this **[paragraph]** subparagraph does not apply in respect of any transaction which meets the requirements of **[paragraph (a)]** subparagraph (i) in terms of which a person disposes of an equity share in a listed company or in a portfolio of a collective investment scheme in securities to any other company and after that disposal, together with any other transaction that is concluded—

[(i)](aa) on the same terms as that transaction; and

[(ii)](bb) within a period of 90 days after that disposal,
that other company holds—

[(aa)](A) at least 35 per cent of the equity shares of that listed company or portfolio; or

[(bb)](B) at least 25 per cent of the equity shares of that listed company or portfolio if no person other than that other company holds an equal or greater amount of equity shares in the listed company or portfolio; or

(b) in terms of which a person disposes of an asset that constitutes an equity share in a foreign company, the market value of which is equal to or exceeds—

(i) in the case of an equity share held as a capital asset, the base cost of that equity share on the date of that disposal; or

(ii) in the case of an equity share held as trading stock, the amount taken into account in respect of that equity share in terms of section 11(a) or 22(1) or (2), to another foreign company, in exchange for an equity share in that other foreign company and immediately before and at the close of the day on which the asset is disposed of in terms of that transaction—

(aa) that person holds a qualifying interest in the foreign company; and

(bb) the other foreign company—

(A) is a controlled foreign company in relation to that person; and

(B) forms part of the same group of companies as that person (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41);”;

(b) by the substitution in subsection (1) for the definition of “qualifying interest” of the following definition:

“ ‘qualifying interest’ of a person [means]—

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(a) for the purposes of paragraph (a) of the definition of ‘asset-for share transaction’, means—

[(a)](i) an equity share held by that person in a company which is a listed company or will become a listed company within 12 months after the transaction as a result of which that person holds that share;

[(b)](ii) an equity share held by that person in a portfolio of a collective investment scheme in securities;

[(c)](iii) equity shares held by that person in a company that constitute at least 20 per cent of the equity shares and that confer at least 20 per cent of the voting rights of [a] that company; or

[(d)](iv) an equity share held by that person in a company which forms part of the same group of companies as that person; or

(b) for the purposes of paragraph (b) of the definition of ‘asset-for-share transaction’, means equity shares held by that person in a foreign company that constitute at least 20 per cent of the equity shares and that confer at least 20 per cent of the voting rights of the foreign company.’;

(c) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:

“(i) disposed of that asset—

(aa) in the case of an asset-for-share transaction contemplated in paragraph (a) of the definition of ‘asset-for-share transaction’, for an amount equal to the amount contemplated in [subparagraphs (i) or (ii) of paragraph (a) of the definition of ‘asset-for-share transaction’] items (aa) or (bb) of subparagraph (i) of that paragraph, as the case may be; or

(bb) in the case of an asset-for-share transaction contemplated in paragraph (b) of the definition of ‘asset-for-share transaction’, for an amount equal to the amount contemplated in subparagraphs (i) or (ii) of that paragraph, as the case may be; and”;

(d) by the substitution in subsection (3A) for the words preceding paragraph (a) of the following words:

“For the purposes of the definition of ‘contributed tax capital’, if an asset is disposed of by a person to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the definition of ‘asset-for-share transaction’ and that person at the close of the day on which that asset is disposed of holds a qualifying interest in that company as contemplated in [paragraph (c)] subparagraph (iii) of paragraph(a) of the definition of ‘qualifying interest’, or is a natural person who will be engaged on a full-time basis in the business of that

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company or a controlled group company in relation to that company of rendering a service, the amount received by or accrued to the company for the issue of the shares is deemed to be equal to—”;

- (e) by the deletion in subsection (3A) of the word “or” at the end of paragraph (a);
- (f) by the addition in subsection (3A) of the word “or” at the end of paragraph (b); and
- (g) by the addition to subsection (3A) of the following paragraph:

“(c) if the asset is an equity share in a listed company or in a portfolio of a collective investment scheme in securities and the company acquiring that share is a listed company, the market value of the share immediately before that disposal.”;

- (h) by the substitution in subsection (3A) for the full stop at the end of paragraph (c) of a comma;
- (i) by the insertion in subsection (3A) of the following words after paragraph (c):

“reduced by—

(i) the amount of any consideration contemplated in subsection (4)(b) to which that person becomes entitled in terms of that asset-for-share transaction; and

(ii) the amount of any debt assumed by that company as contemplated in subsection 8(b) in terms of that asset-for-share transaction: Provided that where that debt is contingent, that amount must be limited to the fair market value of the debt.”;

- (j) by the substitution in subsection (6) for the words preceding the proviso of the following words:

“(6) Where a person—

(a) disposed of [any] an asset to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the definition of ‘asset-for-share transaction’ and, within a period of 18 months after the date of that disposal, that person ceases—

(i) to hold a qualifying interest in that company, as contemplated in [paragraphs (c) and (d)] subparagraphs (iii) and (iv) of paragraph(a) of the definition of ‘qualifying interest’ [, within a period of 18 months after the date of the disposal of that asset] (whether or not [by way] as a result of the disposal of shares in that company)[,]; or

(ii) [ceases within that period] to be engaged on a full-time basis in the business of the company, or controlled group company in relation to that company, of rendering the service contemplated in [subsection (1)(a)(ii)(bb)] paragraph (a)(i)(B) of the definition of ‘asset-for-share transaction’; or

(b) disposed of an equity share to a foreign company in terms of an asset-for-share transaction contemplated in paragraph (b) of the definition of ‘asset-for-share

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transaction’ and, within a period of 18 months after the date of that disposal and whether or not as a result of the disposal of shares in that foreign company—

(i) that person ceases to hold a qualifying interest in the foreign company, as contemplated in paragraph (b) of the definition of ‘qualifying interest’; or

(ii) the foreign company—

(aa) ceases to be a controlled foreign company in relation to that person;

or

(bb) ceases to form part of the same group of companies as that person (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41),

that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—

[(a)](A) disposed of all the equity shares acquired in terms of that asset-for-share transaction that are still held immediately after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

[(b)](B) immediately reacquired all the equity shares contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph”;

(k) by the substitution in subsection (8) for the words following paragraph (b) of the following words:

“that person must, upon the disposal of any equity share acquired in terms of that asset-for-share transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) and (b), treat so much of—

(i) the face value of that debt, where that debt is not contingent; or

(ii) the fair market value of that debt, where that debt is contingent,

as relates to that equity share, as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset or, where that equity share is held as trading stock, as income to be included in that person’s income.”;

(l) by the substitution in subsection (8) for the words following paragraph (b) of the following words:

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“that person must, **[upon the disposal of any equity share acquired in terms of that asset-for-share transaction and]** notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) or (b), treat so much of—

(i) the face value of that debt, where that debt is not contingent; or

(ii) the fair market value of that debt, where that debt is contingent,

as relates to that equity share—

(aa) where that equity share is held as a capital asset, as a [capital distribution] return of capital by way of a distribution of cash in respect of that equity share [, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset,] that accrues to that person immediately after the acquisition by that person of that equity share in terms of that asset-for-share transaction; or[,]

(bb) where that equity share is held as trading stock, as income to be included in that person’s income for the year of assessment during which that equity share is acquired by that person in terms of that asset-for-share transaction.”; and

(m) by the substitution in subsection (8A) for paragraph (b) of the following paragraph:

“(b) the disposal would not be taken into account for purposes of determining—

(i) any taxable income or assessed loss of that person; or

(ii) any proportional amount of the net income of a controlled foreign company which is included in the income of that person in terms of section 9D.”.

(2) Paragraphs (a), (b), (c), (d), (j) and (m) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (e), (f) and (g) of subsection (1) are deemed to have come into operation on 1 January 2011.

(4) Paragraphs (h) and (i) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(5) Paragraph (k) of subsection (1) comes into operation on 1 January 2012 and applies in respect of transactions entered into on or after that date.

(6) Paragraph (l) of subsection (1) comes into operation on 1 April 2012 and applies in respect of transactions entered into on or after that date.

Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, section 50 of Act 60 of 2008, section 49 of Act 17 of 2009 and section 63 of Act 7 of 2010

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74. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the definition of “qualifying interest” of the following words:

“For the purposes of this section—

‘amalgamation transaction’ means any transaction—

- (a) (i) in terms of which any company (hereinafter referred to as the ‘amalgamated company’) disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to another company (hereinafter referred to as the ‘resultant company’) which is a resident, by means of an amalgamation, conversion or merger; and
- [(b)](ii) as a result of which that amalgamated company’s existence will be terminated[:

Provided that the provisions of this section will not apply to a disposal of an asset by an amalgamated company to a resultant company where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal, if that amalgamated company, resultant company and person jointly so elect.] ; or

(b) (i) in terms of which an amalgamated company which is a foreign company disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to a resultant company which is a foreign company, by means of an amalgamation, conversion or merger;

(ii) if—

(aa) that amalgamated company and that resultant company form part of the same group of companies (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately before that transaction: Provided that for the purposes of this item an amalgamated company and a resultant company will only form part of the same group of companies if the expression ‘at least 70 per cent’ in paragraphs (a) and (b) of the definition of group of companies in section 1 were replaced by the expression ‘at least 95 per cent’; and

(bb) that resultant company is a controlled foreign company in relation to any company that is a resident and that forms part of the group of

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companies contemplated in item (aa) immediately before and after that transaction; and

(iii) as a result of which that amalgamated company's existence will be terminated.";

(b) by the deletion in subsection (1) of the definition of "qualifying interest";

(c) by the substitution in subsection (6)(a)(i) for the expression "; and" at the end of item (bb) of a period;

(d) by the deletion in subsection (6)(a) of subparagraph (ii);

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

"(a) the disposal by that amalgamated company of those shares must be deemed not to be a dividend [**with respect to that amalgamated company for purposes of section 64B(3)**]; and";

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

"(10) [**For the purposes of section 64B, so**] So much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)(b) as does not exceed the market value of all the assets of the amalgamated company immediately before the amalgamation, conversion or merger less—

(a) the liabilities; and

(b) the sum of the contributed tax capital of all the classes of shares, of the amalgamated company immediately before the amalgamation, conversion or merger must, for the purposes of the definitions of 'dividend' and 'return of capital' in section 1, be deemed to be [a dividend declared and distributed] an amount transferred by [of] that amalgamated company [to] for the benefit or on behalf of that person [and to have accrued as a dividend to that person on the date on which that person became entitled thereto] in respect of a share held by that person in the amalgamated company.";

(g) by the deletion of subsection (11); and

(h) by the addition to subsection (13) of the following proviso:

": Provided that any tax which becomes payable as a result of the application of this subsection may be recovered from the resultant company";

(i) by the substitution in subsection (14) for paragraph (bA) of the following paragraph:

"(bA) the resultant company is a [**company contemplated in paragraph (e)(i) of the definition of 'company'**] portfolio of a collective investment scheme in securities and the amalgamated company is not a [**company contemplated in that paragraph**] portfolio of a collective investment scheme in securities;"; and

(j) by the substitution for subsection (14) of the following subsection:

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“(14) The provisions of this section do not apply **[in respect of any transaction if]**—

- (a) in respect of any transaction if the resultant company holds at least 70 per cent of the equity shares in the amalgamated company immediately before the amalgamation, conversion or merger;
- (b) in respect of any transaction if the resultant company is a company contemplated in paragraph (c) or (d) of the definition of ‘company’;
- (bA) in respect of any transaction if the resultant company is a portfolio of a collective investment scheme in securities and the amalgamated company is not a portfolio of a collective investment scheme in securities;
- (c) in respect of any transaction if the resultant company is a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);
- (d) in respect of any transaction contemplated in paragraph (a) of the definition of ‘amalgamated company’ if the resultant company is a company contemplated in paragraph (b) or (e)(ii) of the definition of ‘company’ **[in section 1]** and does not have its place of effective management in the Republic;
- (e) in respect of any transaction if any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to the resultant company; **[or]**
- (f) in respect of any transaction if the resultant company is a public benefit organisation or recreational club approved by the Commissioner in terms of section 30 or 30A; or
- (g) to a disposal of an asset by an amalgamated company to a resultant company—
 - (i) in terms of an amalgamation transaction contemplated in paragraph (a) of the definition of ‘amalgamation transaction’ where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal; or
 - (ii) in terms of an amalgamation transaction contemplated in paragraph (b) of the definition of amalgamation transaction where that resultant company and the person contemplated in subsection (6) form part of the same group of companies (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately before and after that disposal,

if that amalgamated company, resultant company and person jointly so elect.”

(2) Paragraphs (a), (b), (c), (d), (g), (h) and (j) of subsection (1) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.

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(3) Paragraphs (e) and (f) of subsection (1) come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation and apply in respect of disposals made on or after that date.

(4) Paragraph (i) of subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008 and section 51 of Act 60 of 2008 and section 64 of Act 7 of 2010

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

(a) by the substitution in subsection (5)(a) for subparagraph (i) of the following paragraph:

“(i) so much of any [a] capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that transferee company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that transferee company; or”; and

(b) by the addition to subsection (6) before paragraph (b) of the following paragraph:

“(a) that disposal is made on or after 3 June 2011 and before 1 January 2013;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of disposals made on or after that date.

Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007, section 29 of Act 3 of 2008, section 52 of Act 60 of 2008 and section 65 of Act 7 of 2010

76. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—

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

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“For purposes of this section, ‘**unbundling transaction**’ means any transaction—

- (a) (i) in terms of which all the equity shares of a company (hereinafter referred to as the ‘unbundled company’) which is a resident [**or a controlled foreign company (hereinafter referred to as the ‘unbundled company’)**] that are held by a company (hereinafter referred to as the ‘unbundling company’) which [**, if listed,**] is a resident, are distributed by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so distributed—
- ~~[(a)]~~(aa) where that unbundling company is a listed company and the shares of the unbundled company are listed shares or will [**be**] become listed shares within 12 months after that distribution, to the shareholders of that unbundling company;
- ~~[(b)]~~(bb) where that unbundling company is an unlisted company, to any shareholder of that unbundling company that forms part of the same group of companies as that unbundling company; or
- ~~[(c)]~~(cc) pursuant to an order in terms of the Competition Act, 1998 (Act No. 89 of 1998), made by the Competition Tribunal or the Competition Appeal Court, to the shareholders of that unbundling company; [**or**
- ~~(d)~~ **where that unbundled company is a controlled foreign company, to a person that holds at least 95 per cent of the equity shares in that unbundling company] and**
- (ii) if the shares distributed as contemplated in subparagraph (i) constitute—
- (aa) where that unbundled company is a listed company immediately before that distribution—
- (A) and no shareholder in the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company in that unbundled company, more than 25 per cent of the equity shares of the unbundled company; or
- (B) and any shareholder in the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling

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company in that unbundled company, at least 35 per cent of the equity shares of that unbundled company; or

(bb) where that unbundled company is an unlisted company immediately before that distribution, more than 50 per cent of the equity shares of that unbundled company; or

(b) (i) in terms of which all the equity shares of an unbundled company which is a controlled foreign company that are held by an unbundling company which is a resident or a controlled foreign company are distributed by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so distributed to shareholders of that unbundling company that form part of the same group of companies as that unbundling company (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately after that distribution; and

(ii) if, immediately before the distribution contemplated in subparagraph (i), the unbundling company holds more than 50 per cent of the equity shares of the unbundled company.”;

(b) by the deletion of the proviso and the further proviso to subsection (1);

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

“(5) Where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction, [—

(a)] the distribution by that unbundling company of the shares must, for the purposes of paragraph (b) of the definition of ‘dividend’ and paragraph (b) of the definition of ‘return of capital’ in section 1, be deemed not to be **[a dividend with respect to] an amount transferred by that unbundling company for [purposes of section 64B(3)]** the benefit or on behalf of that shareholder; [and

(b) any shares acquired by a company in terms of that distribution must be deemed not to be a dividend which accrued to that company for the purposes of section 64B(3).]”;

(d) by the substitution in subsection (7)(b) for subparagraph (i) of the following subparagraph:

“(i) a person that is not a resident, unless that person is a controlled foreign company;”;

(e) by the substitution for subsection (8) of the following subsection:

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“(8) Where an unlisted unbundling company disposes of shares in an unlisted unbundled company in terms of an unbundling transaction to a shareholder and that unbundled company is a controlled group company in relation to that shareholder immediately before and after that disposal, the provisions of this section will not apply to that disposal if that shareholder and that unbundling company [**jointly so elect**] agree in writing that this section does not apply to that disposal.”.

(2) Paragraphs (a), (b), (d) and (e) of subsection (1) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation and applies in respect of distributions made on or after that date.

Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008, section 53 of Act 60 of 2008, section 50 of Act 17 of 2009 and section 66 of Act 7 of 2010

77. (1) Section 47 of the Income Tax Act, 1962, is hereby amended—

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

“(a) in terms of which any company (hereinafter referred to as the ‘liquidating company’) distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the ‘holding company’) which is a resident and which—”;

(b) by the deletion in subsection (1)(a)(i) of item (aa);

(c) by the insertion in subsection (1)(a)(i) of the word “or” at the end of item (cc);

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

“(ii) on the date of that disposal forms part of the same group of companies as the liquidating company [**or holds at least 95 per cent of the equity shares in that company.**]; or”;

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

“(b) in terms of which a liquidating company distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or

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deregistration of that company, if those assets are so disposed of to a holding company which—

- (i) forms part of the same group of companies as the liquidating company (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately before that distribution; and
- (ii) is a controlled foreign company in relation to any resident that forms part of the group of companies contemplated in subparagraph (i) immediately before and after that distribution.”;

(f) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) in anticipation of or in the course of the liquidation, winding up or deregistration of a liquidating company, a **[capital distribution]** return of capital by way of a distribution of cash or an asset *in specie* by that company is received by or accrues to a holding company,”;

(g) by the substitution in subsection (5) for the words following paragraph (b) of the following words:

“the holding company must disregard that disposal or **[distribution]** return of capital for purposes of determining its taxable income, assessed loss, aggregate capital gain or aggregate capital loss.”;

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

“(bA) the distribution would not be taken into account—

- (i) for purposes of determining any taxable income or assessed loss of the liquidating company; or
- (ii) where the liquidating company is a controlled foreign company, for purposes of determining the net income, as contemplated in section 9D(2A), of the liquidating company; or”;

(i) by the substitution in subsection (6) for the proviso to paragraph (c) of the following proviso:

“: Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company or, where the holding company is a controlled foreign company, from any resident who directly or indirectly holds any participation rights in that controlled foreign company as contemplated in section 9D(2)”.

(2) Paragraphs (a), (b), (c), (d), (e), (h) and (i) of subsection (1) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (f) and (g) of subsection (1) come into operation on 1 April 2012 and apply in respect of transactions entered into on or after that date.

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Substitution of section 57 of Act 58 of 1962

78. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 57 of the following section:

“Disposals by companies under donations at the instance of any person

57. If—

(a) any property is disposed of by any company at the instance of any person; and

(b) that disposal would have been treated as a donation had that disposal been made by that person.

that property must for the purposes of this Part be deemed to be disposed of under a donation by that person.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 62 of Act 58 of 1962, as amended by section 8 of Act 114 of 1977, section 36 of Act 101 of 1990, section 23 of Act 28 of 1997, section 33 of Act 53 of 1999 and section 7 of Act 32 of 2005

79. (1) Section 62 of the Income Tax Act, 1962, is hereby amended by the insertion in subsection (1) of the following paragraph after paragraph (c):

“(cA) in the case of any reduction or discharge of any debt owed by a person to a creditor, the amount of that reduction or discharge; or”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of reductions or discharges effected on or after that date.

Amendment of section 64C of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977, section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1986, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007, section 33 of Act 3 of 2008, section 52 of Act 17 of 2009 and section 69 of Act 7 of 2010

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80. (1) Section 64C of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “share incentive scheme”;

(b) by the insertion in subsection (1) of the following paragraph after paragraph (a) of the definition of “share incentive scheme”:

“(b) held by a trustee for the benefit of such directors and employees under an employee share scheme as defined in section 95(1)(c) of the Companies Act, 2008 (Act No. 71 of 2008); or”;

(c) by the insertion in subsection (4) of the following paragraph preceding paragraph (b):

“(a) where the amount constitutes a dividend.”; and

(d) by the substitution in subsection (4) for paragraph (i) of the following paragraph:

“(i) to any loan or credit granted to a trust by a company to enable that trust to purchase shares in—

(i) that company [or] ;

(ii) the controlling company in relation to that company; or

(iii) an associated institution, as defined in paragraph 1 of the Seventh Schedule, in relation to that company,

with a view to the resale of those shares by that trust to employees of that company or that associated institution, under a share incentive scheme operated by the company or the associated institution for the benefit of those employees;”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

Amendment of section 64D of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 70 of Act 7 of 2010

81. (1) Section 64D of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “dividend” for paragraph (b) of the following paragraph:

“(b) paid by a company that is not a resident—

(i) if the share in respect of which that dividend is paid is a listed share; and

(ii) to the extent that that dividend does not consist of a distribution of an asset *in specie*.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64E of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 71 of Act 7 of 2010

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82. (1) Section 64E of the Income Tax Act, 1962, is hereby amended—

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

“(2) For the purposes of this Part, a dividend is deemed to be paid on the sooner of the date on which [it accrues to a shareholder]—

(a) that dividend is paid by the company that declared the dividend; or

(b) the amount of the dividend is set aside for or made unconditionally available to the beneficial owner of the share in respect of which that dividend was declared.”;

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

“(3) Where a company declares and pays a dividend and that dividend consists of a distribution of an asset *in specie*, the amount of the dividend must, for the purposes of subsection (1), be deemed to be equal to the market value of the asset on the date that the dividend is, in terms of subsection (2), deemed to be paid.”; and

(c) by the addition of the following subsections:

“(4)(a) Where, during any year of assessment, any amount is owing to a company in respect of a loan or advance provided by the company to a person by virtue of any share held by that person in that company, the company must, for purposes of subsection (1), be deemed to have paid a dividend.

(b) The amount of the dividend that is deemed to have been paid in terms of paragraph (a) must, for the purposes of subsection (1), be deemed to be equal to the greater of—

(i) the market-related interest in respect of that loan or advance, less the amount of interest that is payable to that company in respect of that loan or advance for that year of assessment; or

(ii) nil.

(c) Where a company is, in terms of subsection (1), deemed to have paid a dividend, that dividend must be deemed to have been paid on the last day of the year of assessment during which the loan or advance is provided by the company.

(d) For the purposes of this subsection, ‘market-related interest’, in relation to any loan or advance provided by a company means the amount of interest that would be payable to that company on the amount owing to that company in respect of that loan or advance for a period during a year of assessment if the loan or advance had been provided for that period at the official rate of interest as defined in paragraph (1) of the Seventh Schedule.

(5) For the purposes of subsection (1), where any amount of any dividend is denominated in any currency other than the currency of the Republic, that amount must be translated to the

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currency of the Republic by applying the spot rate applicable at the time that the dividend is paid.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Insertion of section 64EA in Act 58 of 1962

83. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 64E of the following section:

“Liability for tax

64EA. Any—

(a) beneficial owner of a dividend that does not consist of a distribution of an asset *in specie*;

or

(b) company that declares and pays a dividend that consists of a distribution of an asset *in specie*,

is liable for the dividends tax in respect of that dividend.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 72 of Act 7 of 2010

84. (1) Section 64F of the Income Tax Act, 1962, is hereby amended—

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

“Exemption from tax in respect of dividends other than dividends *in specie*”;

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

“[A] Any dividend that does not consist of a distribution of an asset *in specie* is exempt from the dividends tax if the beneficial owner is—”;

(c) by the deletion of paragraphs (i) and (iA).

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Insertion of section 64FA in Act 58 of 1962

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85. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 64F of the following section:

“Exemption from and reduction of tax in respect of dividends *in specie*

64FA. (1) Where a company declares and pays a dividend that consists of a distribution of an asset *in specie*, that dividend is exempt from the dividends tax if—

(a) the person to whom the payment is made has, by the date of payment of the dividend, submitted to the company—

(i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend would, if that dividend had not been a dividend that consists of a distribution of an asset *in specie*, have been exempt from the dividends tax in terms of section 64F; and

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the beneficial owner cease to be a beneficial owner;

(b) the beneficial owner forms part of the same group of companies, as defined in section 41, as that company; or

(c) the dividend constitutes a disposal as contemplated in paragraph 51A of the Eighth Schedule.

(2) A company that declares and pays a dividend that consists of a distribution of an asset *in specie* is liable for the dividends tax in respect of that dividend at a reduced rate if the person to whom the payment is made has, by the date of payment of the dividend, submitted to the company—

(a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the beneficial owner cease to be the beneficial owner.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64G of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 73 of Act 7 of 2010

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86. (1) Section 64G of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsections (2) and (3), a company that declares and pays a dividend, other than a dividend that consists of a distribution of an asset *in specie*, must withhold dividends tax from that payment at a rate of 10 per cent of the amount of that dividend.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64H of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 74 of Act 7 of 2010

87. (1) Section 64H of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend, other than a dividend that consists of a distribution of an asset *in specie*, that was declared by any other person must withhold dividends tax from that payment at a rate of 10 per cent of the amount of that dividend.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Substitution of section 64I of Act 58 of 1962

88. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 64I of the following section:

“Withholding of dividends tax by insurers

64I. If a dividend, other than a dividend that consists of a distribution of an asset *in specie*, is paid to an insurer as defined in section 29A, the insurer must be deemed to be a regulated intermediary and the dividend must, to the extent that the dividend is allocated to a fund contemplated in section 29A(4)(b), be deemed to be paid to a natural person that is a resident by the regulated intermediary on the date that the dividend is paid to the insurer.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

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Amendment of section 64J of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

89. (1) Section 64J of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) the dividends accrued to that company on or after the effective date, to the extent that the person paying the dividend submits **[prior]** a written notice to the company prior to paying the dividend of the amount by which the dividend reduces the STC credit of **[that person or any other person on behalf of whom the dividend is paid by that person]** the company declaring and paying the dividend.”

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 64K of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

90. (1) Section 64K of the Income Tax Act, 1962, is hereby amended—

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

“(1)(a) **[A]** If, in terms of section 64EA(a), a beneficial owner is liable for [the] any amount of dividends tax [and] in respect of a dividend, that beneficial owner must pay [the tax] that amount to the Commissioner by the last day of the month following the month during which **[the]** that dividend is paid by the company that declared the dividend, unless the tax has been paid by any other person.

(b) If, in terms of section 64EA(b), a company is liable for any amount of dividends tax in respect of a dividend, that company must pay that amount to the Commissioner by the last day of the month following the month during which that dividend is paid by the company.

(c) If, in terms of this Part, a person is required to withhold any amount of dividends tax in respect of a dividend, that person must pay that amount, less any amount refundable in terms of section 64L or 64M, to the Commissioner by the last day of the month following the month during which that dividend is paid by the company that declared the dividend

(d) If, in terms of this Part, a person is required to make payment of any amount of dividends tax, that person must, together with that payment, submit to the Commissioner a return.”;

(b) by the deletion of subsection (2); and

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

“(4) Where a person—

(a) has, in terms of section 64G(3) or 64H(3), withheld dividends tax in accordance with a reduced rate in respect of the payment of any dividend; or

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(b) that is a company which was, in terms of section 64FA(2), liable for dividends tax at a reduced rate in respect of the declaration and payment of any dividend,

[the] that person must submit to the Commissioner any declaration—

- (i) submitted to the person by or on behalf of a beneficial owner; and
- (ii) relied upon by the person in determining the amount of dividends tax so withheld, at the time and in the manner prescribed by the Commissioner.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Repeal of Part IX of Chapter II of Act 58 of 1962

91. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the repeal of Part IX.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 68 of Act 58 of 1962, as substituted by section 20 of Act 5 of 2001

92. Section 68 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) income received by or accrued to or in favour of any person married **[with or without]** in or out of community of property which in terms of section 7 (2) is deemed to be income received by or accrued to such person’s spouse; or”.

Amendment of section 80T, as inserted by section 6 of Act 20 of 2006

93. (1) Section 80T of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “arrangement” of the following definition:

“ **‘arrangement’** means any transaction, operation **[or]**, 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;”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 101 of Act 58 of 1962, as amended by section 29 of Act 90 of 1962, section 22 of Act 52 of 1970, section 39 of Act 94 of 1983, section 40 of Act 129 of 1991, section 27 of Act 36 of 1996, section 49 of Act 30 of 2000, section 50 of Act 74 of 2002 and section 13 of Act 61 of 2008

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94. (1) Section 101 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every company carrying on business or having an office in the Republic and every portfolio of a collective investment scheme [**constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section one,**] shall at all times be represented by an individual residing therein.”.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

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, section 42 of Act 32 of 2004 and section 36 of Act 20 of 2006

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

(a) by the substitution in subsection (5)(a) for subparagraph (i) of the following subparagraph:

“(i) any taxpayer has ceded the right to receive any amount in exchange for the right to receive any amount of dividends; and”;

(b) by the deletion in subsection (5) of paragraph (b).

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation and applies in respect of amounts received or accrued on or after that date.

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998, section 82 of Act 45 of 2003, section 43 of Act 32 of 2004, section 46 of Act 8 of 2007, section 61 of Act 35 of 2007, section 36 of Act 3 of 2008, section 58 of Act 60 of 2008, section 56 of Act 17 of 2009 and section 79 of Act 7 of 2010

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

(a) by the substitution in paragraph (a) of the definition of “lump sum benefit” for the words preceding subparagraph (i) of the following words:

“any amount determined in respect of the commutation of an annuity [**or**], portion of an annuity, retirement income drawdown account or portion of a retirement income drawdown account—”;

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(b) by the substitution in paragraph (b) of the definition of “lump sum benefit” for the words preceding subparagraph (i) of the following words:

“any fixed or ascertainable amount (other than an annuity or withdrawal from retirement income drawdown account)—”; and

(c) by the substitution for the definition of “retire” of the following words:

“**‘retire’**, in relation to a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, means to become entitled to the annuity, withdrawal from a retirement income drawdown account or lump sum benefit contemplated in the definition of ‘retirement date’;”.

(2) Subsection (1) comes into operation on 1 March 2012.

Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as substituted by section 57 of Act 17 of 2009 and amended by section 80 of Act 7 of 2010

97. (1) Paragraph 2 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(a) for item (iii) of the following item:

“(iii) the commutation of any annuity [**or**], portion of an annuity, retirement income drawdown account or portion of a retirement income drawdown account.”.

(2) Subsection (1) comes into operation on 1 March 2010.

Amendment of paragraph 2C of Second Schedule of Act 58 of 1962, as inserted by section 49 of Act 8 of 2007 and amended by section 39 of Act 3 of 2008 and section 61 of Act 60 of 2008

98. The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2C of the following paragraph:

“2C. Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person’s retirement or death, or withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the winding up of any such fund, and in consequence of or following upon an event that is prescribed by the Minister by notice in the *Gazette* and contemplated by the rules of any such fund or the approval of a scheme in terms of section 15B of the [**Pensions**] Pension Funds Act, 1956 (Act No. 24 of 1956), or paragraph 5.3(1)(b) of the Schedule which amends regulation 30 of the Regulations under the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), shall not constitute gross income of that person.”.

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Amendment of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983, section 50 of Act 30 of 1998, section 50 of Act 8 of 2007, section 40 of Act 3 of 2008, section 62 of Act 60 of 2008, section 59 of Act 17 of 2009 and section 81 of Act 7 of 2010

99. (1) Paragraph 3 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraphs (ii) and (iii) of the proviso of the following paragraphs:

- “(ii) where any annuity [**or**], portion of an annuity [(**including a living annuity**)] or retirement income drawdown account which becomes payable on or in consequence of or following upon the death of a member or past member of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such member or past member;
- (iii) where any such lump sum benefit becomes payable but the dependants or nominees of that member or past member elect an annuity [(**including a living annuity**)] or retirement income drawdown account that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity or retirement income drawdown account; and”.

(2) Subsection (1) comes into operation on 1 March 2010.

Amendment of paragraph 3A of Second Schedule to Act 58 of 1962, as inserted by section 82 of Act 7 of 2010

100. (1) Paragraph 3A of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraphs (ii) and (iii) of the proviso of the following paragraphs:

- “(ii) where any annuity [**or**], portion of an annuity [(**including a living annuity**)] or retirement income drawdown account which becomes payable on or in consequence of or following upon the death of a person other than a member or past member of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such person;
- (iii) where any such lump sum benefit becomes payable but the dependants or nominees of that person elect an annuity [(**including a living annuity**)] or retirement income drawdown account that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity or retirement income drawdown account; and”.

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(2) Subsection (1) comes into operation on 1 March 2010.

Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008, section 63 of Act 60 of 2008, section 60 of Act 17 of 2009 and section 83 of Act 7 of 2010

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

“Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, and subject to paragraphs 3 and 3A, any lump sum benefit shall be deemed to have accrued to **[such]** a member of such fund on the earliest of the date—”.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009 and amended by section 84 of Act 7 of 2010

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

(a) by the substitution in subparagraph (1)(a)(i) for subsubitem (bb) of the following subsubitem:

“(bb) pension preservation fund into any pension fund **[or]**, pension preservation fund or retirement annuity fund”;

(b) by the substitution in subparagraph (1)(a)(i) for subsubitem (dd) of the following subsubitem:

“(dd) provident preservation fund into any provident fund **[or]**, provident preservation fund or retirement annuity fund; and”;

(c) by the substitution in subparagraph (1)(a)(ii) for subsubitem (bb) of the following subsubitem:

“(bb) pension preservation fund into any pension fund **[or]**, pension preservation fund or retirement annuity fund”; and

(d) by the substitution in subparagraph (1)(a)(ii) for subsubitem (dd) of the following subsubitem:

“(dd) provident preservation fund into any provident fund **[or]**, provident preservation fund or retirement annuity fund; and”.

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

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32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008, section 17 of Act 18 of 2009 and section 18 of Act 8 of 2010

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

(a) by the substitution in paragraph 1 for paragraph (cc) of the exclusion in the definition of “provisional taxpayer” of the following paragraph:

“(cc) any body corporate, share block company or association of persons contemplated in section 10(1)(e);”;

(b) by the substitution in the definition of “remuneration” for the words preceding the proviso in paragraph (cB) of the following words:

“80 per cent of the amount of the [**fringe**] taxable benefit as determined in terms of paragraph 7 of the Seventh Schedule”.

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as amended by section 41 of Act No 90 of 1988, 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 40 of Act 21 of 1995, section 35 of Act 36 of 1996, 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 Act 16 of 2004, section 43 of Act 20 of 2006, section 105 of Act 8 of 2007, section 44 of Act 3 of 2008 and section 20 of Act 8 of 2010

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

“(ii) by way of an annuity or withdrawal from a retirement income drawdown account provided or payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or benefit fund;”.

(2) Subsection (1) comes into operation on 1 March 2012.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 58 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 24 of Act 19 of 2001, section 58 of Act 74 of 2002, section 34 of Act 30 of 2002, section 24 of Act 16 of 2004, section 47 of Act 32 of 2004, section 53 of Act 31 of 2005, section 1 of Act 3 of 2008 and section 22 of Act 18 of 2009

105. (1) Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(c) for subsubitem (ii) of the following subsubitem:

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“(ii) the taxable income of that person for the relevant year of assessment which is derived from interest, foreign dividends and rental from the letting of fixed property will not exceed R20 000;” and

(b) by the substitution in subparagraph (1)(d) for subsubitem (iii) of the following subsubitem:

“(iii) will not be derived otherwise than from remuneration, interest, foreign dividends, or rental from the letting of fixed property.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 3 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 63 of Act 17 of 2009 and section 86 of Act 7 of 2010

106. (1) Paragraph 3 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the addition in paragraph (g) of the word “or” at the end of item (ii);

(b) by the substitution in paragraph (g) for the expression “; or” of a full stop;

(c) by the deletion in subparagraph (g) of item (iv); and

(d) by the deletion of subparagraph (h).

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

Amendment of paragraph 6 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 88 of Act 7 of 2010

107. (1) Paragraph 6 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) in the case of a company, investment income (other than dividends and foreign dividends).”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 8 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

108. (1) Paragraph 8 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) A person that is deregistered in terms of [—

(a)] paragraph 9 or 10 may not again be registered as a micro business [for a period of three years commencing from the beginning of the year of assessment during which it is deregistered; or

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(b) paragraph 10, may not again be registered as a micro business for a period of three years commencing from the beginning of the year of assessment following upon the year of assessment during which it is deregistered].”

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

Amendment of paragraph 10 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

109. (1) Paragraph 10 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (4).

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as inserted by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990, section 49 of Act 28 of 1997, section 54 of Act 30 of 1998, section 50 of Act 32 of 2004, section 55 of Act 31 of 2007 and section 64 of Act 17 of 2009

110. (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—
(a) by the substitution for item (b) of the following item:

“(b) the employee has been granted the right to use any asset (other than any residential accommodation or household goods supplied with such accommodation) for his or her private or domestic purposes either free of charge or for a consideration payable by the employee which is less than the value of such use, as determined under paragraph [6(2)] 6 in the case of an asset other than a motor vehicle or under paragraph [7(4) or (7)] 7 in the case of a motor vehicle; or”;

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

“(e) any service (other than a service to which the provisions of [item] subparagraph (j) or paragraph 9(4)(a), or subparagraph (k), apply) has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), where that service has been utilized by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of that service or, if any consideration has been given, the amount thereof is less than the amount of the lowest fare referred to in item (a) of subparagraph (1) of paragraph 10, or the cost referred to in item (b) of that subparagraph, as the case may be; or”.

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(c) by the addition after subparagraph (j) of the following subparagraph:

“(k) the employer has during any period directly or indirectly made any payment to any insurer directly or indirectly for the benefit or on behalf of the employee or his or her surviving spouse, child, dependant or nominee; or”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 January 2011 and apply in respect of premiums incurred on or after that date.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice No. 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice No. R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice No. R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999 and section 56 of Act 31 of 2005 and section 91 of Act 7 of 2010

111. (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (8) of the following subparagraph:

“(8A) For the purposes of subparagraphs (7) and (8), if the employee contemplated in those subparagraphs is a ‘judge’ or a ‘Constitutional Court judge’ as defined in section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), the kilometres travelled between the judge’s place of residence and the court over which the judge presides must be deemed to be kilometres travelled for business purposes and not for private purposes.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment ending on or after that date.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993, section 33 of Act 21 of 1994, section 51 of Act 28 of 1997, section 55 of Act 30 of 1998, section 55 of Act 30 of 2000, section 57 of Act 31 of 2005, section 29 of Act 9 of 2006, section 2 of Act 8 of 2007, section 68 of Act 35 of 2007, sections 1 and 48 of Act 3 of 2008 and section 65 of Act 17 of 2009

112. (1) Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3)(a)(ii) for the words preceding the proviso of the following words:

“ ‘B’ represents an abatement equal to an amount of [R54 200] R59 750”.

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(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March 2011.

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

113. (1) The Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 12B of the following paragraph:

“CONTRIBUTIONS TO BENEFIT FUNDS

12C. (1) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(k) is the amount of any contribution or payment made by the employer in respect of a year of assessment to any insurer as defined in section 29A in respect of any premiums payable under a long-term insurance policy directly or indirectly for the benefit or on behalf of the employee or his or her surviving spouse, child, dependant or nominee.

(2) Where any contribution or payment made by an employer contemplated in subparagraph (1) is made in such a manner that an appropriate portion thereof cannot be attributed to the relevant employee, the amount of that contribution or payment in relation to that employee is deemed, for purposes of subparagraph (1), to be an amount equal to the total contribution or payment by the employer to the insurer during the relevant period for the benefit of all employees divided by the number of employees in respect of whom the contribution or payment is made.

(3) If in any case the apportionment of the contribution or payment amongst all employees in accordance with subparagraph (2) does not reasonably represent a fair apportionment of that contribution or payment amongst the employees, the Commissioner may direct that the apportionment be made in such other manner as to him or her appears fair and reasonable.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of premiums incurred on or after that date.

Amendment of paragraph 5 of Eighth Schedule to Act 58 of 1962, as amended by section 32 of Act 9 of 2006, section 2 of Act 8 of 2007, section 1 of Act 3 of 2008 and section 67 of Act 17 of 2009

114. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 5 of the following paragraph:

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“Annual exclusion

5. (1) Subject to subparagraph (2), the annual exclusion of a natural person and a special trust in respect of a year of assessment is ~~[R17 500]~~ R20 000.

(2) Where a person dies during a year of assessment, that person’s annual exclusion for that year is ~~[R120 000]~~ R200 000.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as amended by section 72 of Act 60 of 2001, section 68 of Act 74 of 2002, section 93 of Act 45 of 2003, section 56 of Act 32 of 2004, section 67 of Act 31 of 2005, section 71 of Act 35 of 2007, section 50 of Act 3 of 2008, section 75 of Act 60 of 2008 and section 94 of Act 7 of 2010

115. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2)(a) for the words preceding subitem (i) of the following words:

“a person that commences ~~[or ceases]~~ to be a resident or a controlled foreign company that commences or ceases to be a resident, in respect of all assets of that person other than—”;

and

(b) by the deletion in subparagraph (2)(a) of subitems (ii) and (iii).

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962, as amended by section 94 of Act 45 of 2003, section 72 of Act 35 of 2007 and section 69 of Act 17 of 2009

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

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

“(1) Where a person disposes of a share in a company—

(a) as a result of the acquisition by the company from that person of that share or as part of the liquidation, winding-up or deregistration of that company, that person must disregard so much of any capital loss resulting from the disposal as does not exceed any exempt dividends; or

(b) in circumstances other than those contemplated in item (a), that person must disregard so much of any capital loss resulting from the disposal as does not exceed any extraordinary exempt dividends,

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received by or accrued to that person in respect of that share within a period of 18 months prior to or as part of that disposal.”; and

(b) by the substitution in subparagraph (3) for items (b) and (c) of the following items:

“(b) **‘exempt dividend’** means any—

(i) dividend to the extent that that dividend is exempt from the dividends tax in terms of section 64F; or

(ii) dividend or foreign dividend to the extent that that dividend or foreign dividend is exempt from normal tax in terms of section 10(1)(k)(i) or section 10B; and

(c) **‘extraordinary exempt dividends’** means so much of the amount of the aggregate of any exempt dividends received or accrued within the period of 18 months contemplated in subparagraph (1) as [exceed] exceeds 15 per cent of the proceeds received or accrued from the disposal **[of the share]** contemplated in that subparagraph.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as 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, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007, section 52 of Act 3 of 2008, section 77 of Act 60 of 2008 and section 95 of Act 7 of 2010

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

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

“(a) the expenditure actually incurred in respect of the cost of acquisition or creation of an asset, including the fair market value of any contingent liability that

(i) is assumed as part of the acquisition of an asset;

(ii) relates to that asset,

to the extent of that assumption;”;

(b) by the substitution in subparagraph (1)(h)(iii) for subsubitems (aa) and (bb) of the following subsubitems:

“(aa) a right in a controlled foreign company held directly by a resident, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of

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any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of [section 10 (1)(k)(ii)(cc)] section 10B(2)(a); or

- (bb) a right in a controlled foreign company held directly by another controlled foreign company, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, less the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of [section 10 (1)(k)(ii)(cc)] section 10B(2)(a) had that second-mentioned controlled foreign company been a resident;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2012 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2012 and applies in respect of disposals made on or after that date.

Amendment of paragraph 35 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 86 of Act 60 of 2001

118. (1) Paragraph 35 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to subparagraphs (2), (3), and (4), the proceeds from the disposal of an asset by a person are equal to the total amount (in cash or by way of partial or full relief from any liability of that person or otherwise) received by or accrued to or in favour of, or which is treated as having been received by, or accrued to or in favour of, that person in respect of that disposal, and includes—

[(a) the amount by which any debt owed by that person has been reduced or discharged; and]

(b) any amount received by or accrued to a lessee from the lessor of property for improvements effected to that property;

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Provided that, where the amount is received by or accrued to or in favour of a person by way of relief from any liability of that person and that liability is contingent, that total amount must be limited to the fair market value of that liability.”.

(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of disposals made during years of assessment commencing on or after that date.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002, section 101 of Act 45 of 2003, section 75 of Act 31 of 2005, section 51 of Act 33 of 2006, section 76 of Act 35 of 2007 and section 100 of Act 7 of 2010

119. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) asset (other than an amount in foreign currency owing to that person in respect of any loan, advance or debt payable to that person) the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) [(other than an asset contemplated in paragraph (b) of the definition of ‘foreign currency asset’ in paragraph 84)],”; and

(b) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) asset (other than an amount in foreign currency owing to that person in respect of any loan, advance or debt payable to that person) the capital gain or capital loss from the disposal of which is [derived or deemed to have been derived from a source in the Republic, [as contemplated in section 9(2),]”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2012.

Substitution of paragraph 43A of Eighth Schedule to Act 58 of 1962

120. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 43A of the following paragraph:

“Dividends treated as proceeds on disposal of certain shares

43A. (1) The proceeds from the disposal by a taxpayer that is a company of shares in another company must be increased by an amount equal to the amount of any dividend received

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by or accrued to that taxpayer in respect of any share held by the taxpayer in that other company—

(a) to the extent that that dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;

(b) if the taxpayer immediately before the disposal—

(i) held the shares disposed of as a capital asset (as defined in section 41); and

(ii) held more than 50 per cent of the equity shares in the other company; and

(c) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or in consequence of the disposal obtained any loan or advance or incurred any debt—

(i) owing to the person acquiring the shares or any connected person in relation to that person; or

(ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.

(2) For the purposes of subparagraph (1), the amount by which the proceeds must be increased is limited to the amount of the loan, advance or debt contemplated in item (c) of that subparagraph.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 51A of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 7 of 2010

121. (1) Paragraph 51A 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 residence to which that interest relates is mainly used for domestic purposes during the period commencing on 11 February 2009 and ending on the date of the disposal contemplated in item (a) by one or more natural persons who **[ordinarily resided in that residence during that period]** are connected persons in relation to the company or trust at the time of that disposal; and”;

(b) by the deletion in subparagraph (1) of item (c);

(c) by the substitution in subparagraph (1) for item (d) of the following item:

“(d) within a period of six months commencing on the date of the disposal contemplated in item (a), steps have been taken to terminate the trust.”;

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- (d) by the substitution in subparagraph (3) for subitem (ii) of the following subitem:
“(ii) be deemed to have acquired that interest at a cost equal to the base cost of the shares contemplated in subitem [(1)] (i) as at the date of the acquisition by the person of those shares plus the cost of any improvements effected in respect of that interest subsequent to that date of acquisition.”;
- (e) by the substitution in subparagraph (4)(b) for subitem (iii) of the following subitem:
“(iii) any valuation of that interest effected by that [trust] company as contemplated in paragraph 29(4).”; and
- (f) by the substitution in subparagraph (6) for the words preceding item (a) of the following words:
“This paragraph does not apply to any disposal made to a person [that is a company or trust] unless—”;
- (g) by the substitution in subparagraph (6)(a) for subitem (ii) of the following subitem:
“(ii) where that person is a trust, steps have been taken to terminate the trust.”; and
- (h) by the deletion of subsection (7).

(2) Paragraphs (a), (b), (c), (d), (e), (f) and (g) of subsection (1) are deemed to have come into operation on 1 October 2010 and apply in respect of disposals made on or after that date and before 1 January 2013.

(3) Paragraph (h) of subsection (1) comes into operation on 1 April 2012 and applies in respect of disposals made on or after that date and before 1 January 2013.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as amended by section 31 of Act 19 of 2001, section 98 of Act 60 of 2001, section 87 of Act 74 of 2002, section 102 of Act 45 of 2003, section 76 of Act 31 of 2005 and section 57 of Act 3 of 2008

122. (1) Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (c) of the following item:

- “(c) in respect of a policy in terms of which—
- (i) the policyholder is insured against any loss by reason of the death, disablement or severe illness of an employee or director of the policyholder;
 - (ii) the policy is a risk policy with no cash value or surrender value prior to the maturity date thereof or the death of the employee or director whose life is insured under the policy; and
 - (iii) the policy is not the property of any person other than the policyholder at the time of the payment of the premium.”.

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(2) Subsection comes into operation on 1 January 2012 and applies in respect of disposals made on or after that date.

Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 89 of Act 74 of 2002 and section 34 of Act 9 of 2006

123. (1) Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) The sum of the amounts to be disregarded by a natural person as contemplated in subparagraph (2) may not exceed [~~R750 000~~] R900 000 during that natural person’s lifetime.”.

(2) Subsection is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 45 of 2003 and amended by section 79 of Act 31 of 2005, section 35 of Act 9 of 2006, section 65 of Act 8 of 2007, section 77 of Act 35 of 2007, section 58 of Act 3 of 2008, section 81 of Act 60 of 2008 and section 108 of Act 7 of 2010

124. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (1) of the definition of “foreign company”;
- (b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“Subject to subparagraph (5), a person must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)) [~~], or headquarter company if—~~”;

- (c) by the substitution in subparagraph (2)(a) for subitem (i) of the following subitem:

“(i) held at least [~~20~~] 10 per cent of the equity shares and voting rights in that controlled foreign company;”;

- (d) by the substitution in subparagraph (2) for the proviso to item (a) of the following proviso:

“Provided that in determining the total equity share capital in a foreign company, there shall not be taken into account any share which would have constituted a hybrid equity instrument, as contemplated in section 8E, but for the [~~three~~] 10 year period requirement contained in that section”;

- (e) by the insertion in subparagraph (2)(b) of the word “or” at the end of subitem (i);
- (f) by the deletion in subparagraph (2)(b) of the word “or” at the end of subitem (ii);

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- (g) by the deletion in subparagraph (2)(b) of subitem (iii);
- (h) by the substitution in subparagraph (3)(c)(ii) for subsubitem (bb) of the following subsubitem:
“(bb) was included in the income of a shareholder of that company or would but for the provisions of **[section 10(1)(k)(ii)(dd)] section 10B(2)(a)** have been so included; or”;
- (i) by the substitution in subparagraph (3)(c)(iii)(bb) for subsubitem (B) of the following subsubitem:
“(B) was included in the income of a shareholder of that company or would but for the provisions of **[section 10(1)(k)(ii)(d)] section 10B(2)(a)** have been so included; and”;
- (j) by the substitution in subparagraph (3) for item (d) of the following item:
“(d) that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share capital forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph (a) of the definition of “participation rights” in section 9D **[and without having regard to any election exercised in terms of section 9D (13)]**).”;
- (k) by the substitution in subparagraph (4) for item (b) of the following item:
“(b) would have been included in the income of the company to which that distribution was made but for **[section 10(1)(k)(ii)(dd)] section 10B(2)(a)**,”;
- (l) by the substitution in subparagraph (5) for the words preceding the proviso of the following words:
“(5) A person must disregard any capital gain **[or capital loss]** determined in respect of any **[capital distribution contemplated in paragraph 67A, 76, 76A or 77] foreign return of capital** received by or accrued to that person from a “foreign company” as defined in section 9D (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2 (2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least **[20] 10** per cent of the total equity share capital and voting rights in that company”; and
- (m) by the substitution in subparagraph (5) for item (a) of the following item:
“(a) in determining the total equity shares in a company, there shall not be taken into account any share which would have constituted a hybrid equity instrument, as contemplated in section 8E, but for the **[three] 10** year period requirement contained in that section;”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2012 and apply in respect of disposals made on or after that date.

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(2) Paragraphs (c), (d), (h), (i), (j), (k), (l) and (m) of subsection (1) come into operation on 1 April 2012 and apply in respect of disposals made on or after that date.

(3) Paragraphs (e), (f) and (g) of subsection (1) come into operation on 1 January 2012 and apply in respect of transactions entered into on or after that date.

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as amended by section 106 of Act 60 of 2001, section 95 of Act 74 of 2002, section 113 of Act 45 of 2003, section 83 of Act 35 of 2007, section 59 of Act 3 of 2008, section 78 of Act 17 of 2009 and section 110 of Act 7 of 2010

125. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion of the definition of “capital distribution”;

(b) by the substitution in the definition of “date of distribution” for the words preceding subparagraph (a) of the following words:

“ ‘**date of distribution**’, in relation to any distribution, means the date of **[approval]** payment of the distribution [by the directors or by some other person or body of persons with comparable authority under a law, regulation or rule to which that company is subject, except where the distribution is made]— ”;

(c) by the deletion of the definition of “distribution”; and

(d) by the deletion of the definition of “share”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 114 of Act 45 of 2003, section 29 of Act 16 of 2004 and section 79 of Act 17 of 2009

126.(1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Where a company makes a distribution of an asset *in specie* to a person holding a share in that company, that company must be treated as having disposed of that asset to that shareholder on the date of distribution for an amount received or accrued equal to the market value of that asset on that date.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act

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16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007, section 60 of Act 3 of 2008 and section 84 of Act 60 of 2008

127. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“ ‘**[Distributions]** **Returns of capital by way of distributions of cash or assets *in specie* [received by shareholder]** ’ ”;

(b) by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to subparagraph (2), where a **[capital distribution]** return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share [distributed] in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of **[that capital distribution]** that cash or asset occurs—

(a) before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset **[*in specie*]**;

(b) on or after valuation date but before 1 October 2007 and that share is disposed of by the shareholder on or before 31 December 2011, treat the amount of that cash or the market value of that asset **[*in specie*]** as proceeds when that share is disposed of; **[and]**

(c) on or after 1 October 2007 but before 1 January 2012, treat the amount of that cash or the market value of that asset **[*in specie*]** as proceeds when that share is partly disposed of in terms of paragraph 76A.”; and

(c) by the substitution for subparagraphs (2), (3) and (4) of the following subparagraphs:

“(2) Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a **[capital distribution]** return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share [distributed] in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that shareholder in respect of those shares on or after valuation date but before 1 October 2007, the weighted average base cost of those shares must be determined by—

(a) deducting the amount of that cash or the market value of that asset **[*in specie*]** from the base cost of those shares held when that **[capital distribution]** return of capital was received or accrued; and

(b) dividing the result by the number of those shares held when that **[capital distribution]** return of capital was received or accrued.

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(3) [Any] Where a return of capital is effected by way of a distribution of an asset *in specie* [received by or accrued to a shareholder], that asset must be treated as having been acquired by the person to whom the distribution is made on the date of distribution and for expenditure equal to the market value of that asset on that date, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

(4) Every company that makes a distribution to any other person and every person that pays a distribution to any other person on behalf of a company must by the time of the distribution or payment notify that other person in writing of the extent to which the distribution or payment constitutes a [capital distribution] return of capital.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 76A of Eighth Schedule to Act 58 of 1962, as inserted by section 85 of Act 35 of 2007 and amended by section 61 of Act 3 of 2008

128. (1) Paragraph 76A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Subject to paragraph 76(2), where—

(a) a return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 41) is received by or accrues to a shareholder in respect of a share; and

(b) that return of capital is received by or accrues to that shareholder on or after 1 October 2007 and before 1 January 2012,

that shareholder must be deemed to have disposed of part of that share on the date that the return of capital is received by or accrues to the shareholder.”;

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

“(3) For purposes of paragraph 33(1) the market value of the part disposed of under this paragraph must be treated as being equal to the amount of the cash or the market value of the asset [*in specie*] received or accrued by way of a [capital distribution] return of capital.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Insertion of paragraph 76B in Eighth Schedule to Act 58 of 1962

129. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 76A of the following paragraph:

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“Reduction in base cost of shares as result of distributions

76B. (1) Where—

- (a) a return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share; and
- (b) that return of capital is received by or accrues to that shareholder—
 - (i) on or after 1 January 2012; and
 - (ii) prior to the disposal of that share,

the shareholder must reduce the expenditure in respect of the share by the amount of that cash or the market value of that asset on the date that the asset is received by or accrues to that shareholder.

(2) Where the amount of a return of capital contemplated in subparagraph (1) exceeds the expenditure in respect of the share in respect of which that return of capital is received or accrues, the amount of the excess must be treated as a capital gain in determining that shareholder’s aggregate capital gain or aggregate capital loss for the year of assessment in which that share is disposed of by the shareholder.

(3) Where—

- (a) a return of capital contemplated in subparagraph (1) is received by or accrues to a shareholder in respect of a share; and
 - (b) that share constitutes a pre-valuation date asset in relation to that shareholder, for purposes of determining the date of acquisition of that share and the expenditure in respect of the cost of acquisition of that share, that shareholder must be treated as—
 - (i) having disposed of that share on the date that the return of capital is received or accrues for an amount equal to the market value of the share on that date; and
 - (ii) having immediately reacquired that share on that date at an expenditure equal to that market value immediately after that return of capital—
 - (aa) less any capital gain that would have been determined had the share been disposed of at market value on that date; and
 - (bb) increased by any capital loss that would have been determined had the share been disposed of at market value on that date,
- which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

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(4) For the purposes of paragraphs (1) and (2), expenditure incurred is deemed to equal the amount of expenditure after taking into account the adjustments contemplated in subparagraph (3).”.

(2) Subsection (1) comes into operation on 1 April 2012 and applies in respect of returns of capital received or accrued on or after that date.

Amendment of paragraph 77 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

130. (1) Paragraph 77 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) **[Any capital distribution]** Where—

(a) a return of capital by way of a distribution of cash or assets *in specie* is received by or accrued to [that] a shareholder contemplated in subparagraph (1) in respect of [those shares] a share that is treated as having been disposed of in terms of that subparagraph; and

(b) that return of capital is received by or accrued to that shareholder after the [disposal of those shares] date contemplated in subparagraph (1)(a) or (b).

the return of capital must be treated as a capital gain in determining that shareholder’s aggregate capital gain or aggregate capital loss for that year of assessment.”.

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as amended by section 97 of Act 74 of 2002, section 116 of Act 45 of 2003, section 31 of Act 16 of 2004, section 85 of Act 60 of 2008 and section 111 of Act 7 of 2010

131. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the insertion before subparagraph (2) of the following subparagraph:

“(1) Where a company makes a distribution of shares for no consideration, those shares must be treated as having been acquired on the date of distribution for expenditure incurred and paid of nil, except to the extent that the distribution of those shares constitutes a dividend, in which case they must be treated as having been acquired on the date of distribution for expenditure incurred and paid equal to the amount of that dividend.”; and

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

“(3) Where a company issues shares in substitution of previously held shares as contemplated in subparagraph (2) and also **[makes a capital distribution]** effects a return of

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capital by way of a distribution of cash or assets *in specie* with respect to those previously held shares—

- (a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution but not in respect of the transfer of those previously held shares exchanged for that **[capital distribution]** return of capital; and
- (b) both the substitution and that **[capital distribution]** return of capital must be treated as separate transactions with the expenditure allowable in terms of paragraph 20 and any market value adopted or determined in terms of paragraph 29(4) in respect of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares on the date of distribution and that **[capital distribution]** return of capital received in exchange therefor.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2011.

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2012.

Repeal of Part XIII of Eighth Schedule to Act 58 of 1962

132. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of Part XIII.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 8 of Tenth Schedule to Act 58 of 1962, as substituted by section 89 of Act 35 of 2007

133. (1) Paragraph 8 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (7) for item (a) of the following item:

“(a) an ‘**oil and gas right**’ means **[an]** any—

- (i) exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any right or interest therein; **[and]**
- (ii) exploration right acquired by virtue of a conversion contemplated in item 4 of Schedule II to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any interest therein; or
- (iii) production right acquired by virtue of a conversion contemplated in item 5 of Schedule II to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or any interest therein; and”.

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(2) Subsection (1) is deemed to have come into operation on 30 October 2007 and applies in respect of conversions taking place on or after that date.

Amendment of section 47B of Act 91 of 1964

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

“The tax shall be charged at the rate of [~~R150~~] R190 on the carriage of each chargeable passenger departing on a flight”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2011 and applies in respect of the carriage of a chargeable passenger on any flight which commences on or after that date, if the ticket of that passenger in respect of that flight was purchased and issued after the date of promulgation of this Act.

Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001, section 53 of Act 30 of 2002, section 41 of Act 12 of 2003, section 155 of Act 45 of 2003, section 36 of Act 16 of 2004, section 14 of Act 9 of 2005, section 36 of Act 9 of 2006, section 76 of Act 8 of 2007, section 66 of Act 3 of 2008, section 88 of Act 17 of 2009 and section 117 of Act 7 of 2010

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

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

(3) For the purposes of Appendix II and Appendix III to this Act any word or expression to which a meaning has been assigned in the Customs and Excise Act, 1964, bears the meaning so assigned unless the context otherwise indicates.

(4) Subject to section 58(1) of the Customs and Excise Act, 1964, subsection (1) is deemed to have come into operation on 23 February 2011.

(5) Subject to section 58(1) of the Customs and Excise Act, 1964, subsection (1) is deemed to have come into operation on 1 March 2011.

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Continuation of certain amendments of Schedules to Act 91 of 1964

136. Every amendment or withdrawal of or insertion in Schedule No. 1 to 6, 8 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 August 2010 up to and including 31 July 2011, shall not lapse by virtue of section 48(6), 49, 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

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, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008 and section 119 of Act 7 of 2010

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

(a) by the addition to the proviso to the definition of “enterprise” of the following paragraph:

“(xi) where a mutual association licensed in terms of section 30 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), to carry on the business of insurance of employers against their liabilities to employees in terms of that Act pays compensation that is identical to compensation that would have been paid in similar circumstances in terms of that Act, the supply of services by that mutual association to the extent of that compensation shall be deemed not to be the carrying on of an enterprise;”; and

(b) by the deletion in the definition of “input tax” of subparagraphs (i) and (ii) of the proviso to paragraph (b).

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of services supplied on or after that date.

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

138. (1) Section 2 of the Value-Added Tax Act, 1991, is hereby amended—

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

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“(o) the acquisition of the interest in an asset as contemplated in paragraph (b) of the definition of ‘sukuk’ in section 24JA(1) of the Income Tax Act and any payment in respect of that interest in the asset”;

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

“(iiiA) **‘derivative’** means a derivative as defined **[for purposes of Statement AC 133 of generally accepted accounting practice]** in International Accounting Standard 39 of the International Accounting Standards issued by the International Accounting Standards Board.”; and

(c) by the substitution in subsection (2) for paragraph (vii) of the following paragraph:

“(vii) **‘superannuation scheme’** means a scheme whereby provision is made for the payment or granting of benefits by a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in section 1 of the Income Tax Act.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2012 and applies in respect of sharia arrangements entered into on or after that date.

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, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009 and section 120 of Act 7 of 2010

139. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (2C).

(2) Subsection (1) comes into operation on 1 March 2012.

Amendment of section 8A of Act 89 of 1991, as inserted by section 121 of Act 7 of 2010

140. (1) Section 8A of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs:

“(a) the **[bank]** financier shall be deemed not to have acquired or supplied goods under the sharia arrangement;

(b) the client shall be deemed to have acquired the goods—

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- (i) from the seller for consideration equal to the amount paid by the **[bank] financier** to the seller; and
- (ii) at such time as the supply was made by the seller by virtue of the transaction between the seller and the **[bank] financier**; and
- (c) any premium paid or payable to the **[bank] financier** by the client shall be deemed to be consideration in respect of an exempt financial service supplied by the **[bank] financier** as contemplated in section 2(1)(f): Provided that this paragraph shall not apply to the extent to which the consideration constitutes any fee, commission or similar charge.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, 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, section 43 of Act 9 of 2006, section 80 of Act 20 of 2006, section 82 of Act 8 of 2007, section 107 of Act 60 of 2008 and section 122 of Act 7 of 2010

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

- (a) by the deletion of subsection (5A); and
- (b) by the substitution for subsection (7) of the following subsection:

“(7) Where goods or services are deemed by section 18(1) or 18B(3) to be supplied by a vendor, the supply shall, subject to the provisions of subsection (8), be deemed to be made for a consideration in money equal to the open market value of such supply.”.

(2) Subsection (1) comes into operation on 1 March 2012.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, 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, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007 and Government Notice No. R.1024 in *Government Gazette* 32664 of 30 October 2009

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

- (a) by the substitution in paragraph (n) for subparagraph (i) of the following subparagraph:

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- “(i) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), wholly or partially continuing in force or wholly or partially converted into a new right pursuant to the same Schedule, to the extent of the continuation or conversion of such rights; or”; and
- (b) by the deletion in subsection (1) of paragraph (n).
- (2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 13 of Act 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 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005 and section 110 of Act 60 of 2008

143. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) The value to be placed on the importation of goods into the Republic which have been imported and entered for storage in a licensed Customs and Excise storage warehouse but have not been entered for home consumption shall be deemed to be the greater of the value determined in terms of subsection (2)(a) or the value of acquisition determined under section 10(3) if those goods while stored in that storage warehouse are supplied to any person before being entered for home consumption.

(2B) Notwithstanding sub-section (2), the value to be placed on the importation of goods into the Republic where Note 5(a)(ii)(aa) of Item No. 470.03/00.00/02.00 of Schedule 1 to this Act is applicable shall be the value determined under section 10(3).”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act and applies in respect of goods imported on or after that date.

Amendment of section 14 of Act 89 of 1991, as amended by section 171 of Act 45 of 2003, section 101 of Act 32 of 2004 and section 28 of Act 8 of 2010

144. (1) Section 14 of the Value-Added Tax Act is hereby amended by the addition to subsection (5) of the following paragraph:

“(e) a supply of services of which the value in respect of that supply does not exceed R500.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of services imported on or after that date.

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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, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007 and section 29 of Act 8 of 2010

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

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

“No deduction of input tax in respect of a supply ~~[or] of goods or services,~~ the importation of any goods or services into the Republic[,] or any other deduction[,] shall be made in terms of this Act, unless—”;

(b) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item:

“(bb) in respect of supplies of second-hand goods to which paragraph (b) of the definition of “input tax” in section 1 applies which consist of[—

(A) fixed property in respect of the acquisition of which transfer duty is, in terms of the Transfer Duty Act, payable; or

(B) a share in a share block company in respect of the original issue or registration of transfer of which stamp duty is, in terms of the Stamp Duties Act, payable] fixed property to which the provisions of section 9(3)(d) apply if transfer of that fixed property was effected by registration in a deeds registry and registered in the name of the vendor that claims the deduction during that tax period;”; and

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

“(i) an amount equal to the tax fraction of any payment made by the vendor during the tax period in respect of the redemption with him, or his agent, of the monetary value of any token, voucher or stamp contemplated in section 10(20), to a supplier of goods or services who has granted a discount on the surrender to him of such token, voucher or stamp by a recipient of a supply of goods or services if those goods or services are not charged with tax at the rate of zero per cent under section 11;”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of supplies made on or after that date.

Insertion of section 18B in Act 89 of 1991

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146. (1) The Value-Added Tax Act, 1991, is hereby amended by the insertion after section 18A of the following section:

“Temporary letting of fixed property

18B. (1) For purposes of this section ‘developer’ means a person who constructs, extends or improves a building or part of a building for the sole purpose of disposing of that building or part of a building after the construction, extension or improvement.

(2) Notwithstanding the provisions of section 18(1) where goods being fixed property—
(a) is developed by a vendor who is a developer wholly for the purpose of consumption, use or supply in the course of making taxable supplies or is held or applied for that purpose;
and

(b) that fixed property is subsequently temporarily applied by that vendor for supplying accommodation in a dwelling under an agreement for the letting and hiring thereof, the supply of such fixed property shall, subject to subsection (3), be deemed not to be a taxable supply in the course or furtherance of that vendor’s enterprise.

(3) The fixed property contemplated in subsection (2) shall be deemed to have been supplied by that vendor by way of a taxable supply for a consideration as contemplated in section 10(7) in the course or furtherance of that vendor’s enterprise at the earlier of—

(a) a period of 36 months after the conclusion of the agreement contemplated in subsection (2)(b); or

(b) the date that the vendor applies that fixed property permanently for a purpose other than that of making taxable supplies.”.

(2) Subsection (1) comes into operation on the date of the promulgation of this Act and ceases to apply on 1 January 2015.

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, section 110 of Act 31 of 2005 and section 86 of Act 20 of 2006

147. (1) Section 22 of the Value-Added Tax Act, 1991, is hereby amended—

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

“**[Where]** Subject to subsection (5), where a vendor—”;

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

“**[Where]** Subject to subsection (3A), where a vendor who is required to account for tax payable on an invoice basis in terms of section 15—”;

(c) by the substitution in subsection (3) for paragraph (iii) of the proviso of the following paragraph:

“(iii) **[subparagraph]** paragraph (ii) shall not be applicable where a vendor has already accounted for tax payable in accordance with this subsection.”;

(d) by the insertion of the following subsection:

“(3A) Subsection (3) shall not be applicable in respect of a taxable supply made by a vendor which is a member of a group of companies as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), to another vendor which is a member of the same group of companies for as long as both vendors are members of the same group of companies.”;

(e) by the addition of the following subsection:

“(5)(a) Where a vendor which is a member of a group of companies as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), makes a taxable supply to another vendor which is a member of the same group of companies, the vendor who made the taxable supply may make a deduction in terms of section 16(3) of an amount of tax that has become irrecoverable as contemplated in subsection (1) if—

- (i) the accounting records of the vendor who made the taxable supply reflect that the debt has become irrecoverable; and
- (ii) the vendor who made the taxable supply proves that the accounting records of the recipient vendor reflect that the recipient vendor has accounted for the input tax in respect of the amount of the debt that has become irrecoverable as contemplated in paragraph (a).

(b) Where a vendor—

- (i) ceases to be part of the same group of companies; or
- (ii) has made a deduction in terms of subsection (1) read with section 16(3),

the recipient vendor must account for output tax in terms of this section equal to the tax fraction of that portion of the consideration which has not been paid at the earlier of the vendors ceasing to be part of the same group of companies or when the vendor made a deduction in terms of subsection (1) read with section 16(3).”.

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

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Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008, section 93 of Act 17 of 2009 and section 23 of Act 7 of 2010

148. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (9).

(2) Subsection (1) comes into operation on 1 March 2012.

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 No. 2244 of 31 July, 1992, section 44 of Act 97 of 1993, Government Notice No. 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice No. R.111 in *Government Gazette* 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act No. 20 of 2006, section 85 of Act 8 of 2007, Government Notice No. R.958 in *Government Gazette* 30370 of 12 October 2007, section 107 of Act 35 of 2007 and Government Notice No. R.766 in *Government Gazette* 32416 of 24 July 2009

149. (1) Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

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

“2. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value not exceeding [R100] R500 per parcel.”;

(b) by the addition to Item No. 470.00 of the following Note:

“5. For the purposes of item No. 470.03/00.00/02.00:

(a) Where the importer is contractually entitled to keep a portion of the goods manufactured, processed, finished, equipped or packed in lieu of payment for the operations carried out, that importer must—

(i) also export those goods within the period of 12 months contemplated in

Note 2(a); or

(ii) (aa) process a bill of entry at the office of the Controller for payment of the value added tax on the goods retained; and

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(bb) adjust by voucher of correction the rebate bill of entry in respect of the quantity and value of the goods used to manufacture the goods retained;

(b) The importer is required to maintain the records prescribed in terms of section 75 of the Customs and Excise Act.”; and

(c) by the insertion after item number 470.03/00.00/01.00 of the following item:

“470.03/00.00/02.00 Goods free of duty, for use in the manufacture, processing, finishing, equipping or packing of goods exclusively for export.”.

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

Amendment of section 4 of Act 4 of 2002

150. (1) Section 4 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—

(a) by the deletion of the word “and” at the end of paragraph (c);

(b) by the deletion of the full stop at the end of paragraph (d) and the insertion of a semi-colon at the end of that paragraph;

(c) by the addition after paragraph (d) in subsection 4 of the following paragraphs:

“(e) the President, Deputy President, a Minister, Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature;

(f) any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2002.

Amendment of section 1 of Act 25 of 2007

151. (1) Section 1 of the Securities Transfer Tax Act, 2007, is hereby amended—

(a) by the insertion in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “security”;

(b) by the substitution in subsection (1) for the expression “; or” at the end of paragraph (b) of the definition of “security” of a comma; and

(c) by the deletion in subsection (1) of paragraph (c) of the definition of “security”.

(2) Subsection (1) comes into operation on 1 April 2012.

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Amendment of section 4 of Act 25 of 2007

152. (1) Section 4 of the Securities Transfer Tax Act, 2007, is hereby amended—

- (a) by the substitution in subsection (1) for the expression “; or” at the end of paragraph (a) of a full stop; and
- (b) by the deletion in subsection (1) of paragraph (b).

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 5 of Act 25 of 2007, as amended by section 126 of Act 60 of 2008

153. (1) Section 5 of the Securities Transfer Tax Act, 2007, is hereby amended—

- (a) by the substitution in subsection (1) for the expression “; or” at the end of paragraph (a) of a full stop; and
- (b) by the deletion in subsection (1) of paragraph (b).

(2) Subsection (1) comes into operation on 1 April 2012.

Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008, section 97 of Act 17 of 2009 and section 127 of Act 7 of 2010

154. (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (m); and
- (b) by the substitution in subsection (1) for paragraph (q) of the following paragraph:

“(q) if the person to whom that security is transferred is a member who has purchased the security **[for the account and benefit of that person]** in that member’s capacity as principal; or”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of transactions entered into—

- (a) on or after that date; and
- (b) on or before 31 December 2012.

Substitution of section 8A of Act 25 of 2007, as inserted by section 128 of Act 7 of 2010

155.(1) The Securities Transfer Tax Act, 2007, is hereby amended by the substitution for section 8A of the following section:

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“8A.(1) In the case of any murabaha as defined in section 24JA(1) of the Income Tax Act, 1962 (Act No. 58 of 1962)—

- (a) the financier shall be deemed not to have acquired any beneficial ownership of the security under the sharia arrangement; and
- (b) the client shall be deemed to have acquired beneficial ownership of the security from the seller—
 - (i) for an amount equal to the consideration paid by the financier to the seller; and
 - (ii) at such time as the financier acquired the beneficial ownership of the security from the seller by virtue of the transaction between the seller and the financier.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 8A of Act 28 of 2008, as inserted by section 135 of Act 7 of 2010

156. (1) Section 8A of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for the heading of the following heading:

“[Exemption for domestic refining] Rollover relief for transfers between extractors”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 10 of Act 28 of 2008 as amended by section 101 of Act 17 of 2009

157. (1) Section 10 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) is deemed to be [an extractor] a person while that [registration] election remains in effect; and”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 15 of Act 28 of 2008

158. (1) The Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for section 15 of the following section:

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“Foreign currency

15. Any amount received by or accrued to, or expenditure or loss incurred by[,]—

(a) an oil and gas company as defined in paragraph 1 of the Tenth Schedule to the Income Tax Act, in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the average exchange rate for the year in which that amount was so received or accrued or expenditure or loss was so incurred;

(b) an extractor in any currency other than the currency of the Republic must be translated to the currency of the Republic by applying the spot rate, as defined in section 1 of the Income Tax Act, on the date on which that amount was so received or accrued or expenditure or loss was so incurred.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of Schedule 2 to Act 28 of 2008, as amended by section 103 of Act 17 of 2009 and section 137 of Act 7 of 2010

159. (1) Schedule 2 to the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for the words in the “Unrefined condition” column corresponding to “Vanadium” of the following words:

“Concentrate < 10% V₂O₅ equivalent and less than 2% calcium and silica bearing gangue minerals (SiO₂ + CaO)”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 4 of Act 60 of 2008, as amended by section 138 of Act 7 of 2010

160. (1) Section 4 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) [Paragraphs] Paragraph (b) [and (c)] of subsection (1) [come] comes into operation on 1 January 2011.”

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 14 of Act 60 of 2008

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161. (1) Section 14 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation]** 1 April 2013.”.

(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 84 of Act 60 of 2008

162. (1) Section 84 of the Revenue Laws Amendment Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation]** 1 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

Repeal of section 55 of Act 17 of 2009

163. The Taxation Laws Amendment Act, 2009, is hereby amended by the repeal of section 55.

Repeal of section 79 of Act 17 of 2009

164.(1) The Taxation Laws Amendment Act, 2009, is hereby amended by the repeal of section 79.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

Amendment of section 6 of Act 7 of 2010

165. (1) Section 6 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October **[2010]** 2011; and”.

(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

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Amendment of section 18 of Act 7 of 2010

166. (1) Section 18 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) Paragraphs *(b)*, *(f)*, *(l)*, *(n)*, *(o)*, *(p)*, *(q)* and *(v)* of subsection (1) come into operation on 1 January 2011.

(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

Amendment of section 46 of Act 7 of 2010

167. (1) Section 46 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

“(a) in the case of any foreign partnership that is established or formed before 24 August 2010, as from the commencement of years of assessment commencing on or after 1 October [2010] 2011; and”.

(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

Repeal of section 56 of Act 7 of 2010

168. (1) Section 56 of the Taxation Laws Amendment Act, 2010, is hereby repealed.

(2) Subsection (1) comes into operation on 1 October 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 137 of Act 7 of 2010

169. (1) Section 137 of the Taxation Laws Amendment Act, 2010, is hereby amended by the deletion of paragraph *(g)*.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

Amendment of section 138 of Act 7 of 2010

170. (1) Section 138 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

“(a) by the deletion in subsection (1) of [paragraph] paragraphs *(c)* and *(d)*; and”.

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(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

Amendment of section 145 of Act 7 of 2010

171. (1) Section 145 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsections (2) and (3) of the following subsections—

“(2) Paragraph (a) of subsection (1) comes into operation on **[1 January 2011]** the date of promulgation of this Act [and applies in respect of years of assessment commencing on or after that date].

(3) Paragraph (b) of subsection (1) **[is deemed to have come]** comes into operation on **[1 October 2009]** 1 January 2011.”.

(2) Subsection (1) is deemed to have come into operation on 24 August 2010.

Special zero-rating in respect of goods and services supplied by Cricket South Africa

172. (1) The supply of goods and services by Cricket South Africa in respect of the hosting of—

- (a) the International Cricket Council Championship Trophy South Africa 2009 event shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the rate of zero per cent to the extent that the consideration for that supply is received from the International Cricket Council; and
- (b) the Champions League Twenty20 (2010) event shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the rate of zero per cent to the extent that the consideration for that supply is received from the Governing Council of the Champions League Twenty20.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2009.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2010.

Short title and commencement

173. (1) This Act is called the Taxation Laws Amendment Act, 2011.

(2) Except insofar as otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2012.

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Appendix I

(Section 6)

RATES OF NORMAL TAX AND REBATES

1. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income (excluding any retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit) of any natural person, deceased estate, insolvent estate or special trust (other than a public benefit organisation or recreational club referred to in paragraph 5) in respect of any year of assessment commencing on 1 March 2011 is set out in the table below:

Taxable income	Rate of tax
Not exceeding R150 000	18 per cent of taxable income
Exceeding R150 000 but not exceeding R235 000	R27 000 plus 25 per cent of amount by which taxable income exceeds R150 000
Exceeding R235 000 but not exceeding R325 000	R48 250 plus 30 per cent of amount by which taxable income exceeds R235 000
Exceeding R325 000 but not exceeding R455 000	R75 250 plus 35 per cent of amount by which taxable income exceeds R325 000
Exceeding R455 000 but not exceeding R580 000	R120 750 plus 38 per cent of amount by which taxable income exceeds R455 000
Exceeds R580 000	R168 250 plus 40 per cent of amount by which taxable income exceeds R580 000

2.

Description	Reference to Income Tax Act, 1962	Amount
Primary rebate	Section 6(2)(a)	R10 755
Secondary rebate	Section 6(2)(b)	R6 012
Tertiary rebate	Section 6(2)(c)	R2 000

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3. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of a trust (other than a special trust or a public benefit organisation referred to in paragraph 5) in respect of any year of assessment ending on 29 February 2012 is 40 per cent.

4. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of a company (other than a public benefit organisation or recreational club referred to in paragraph 5 or a small business corporation referred to in paragraph 6) in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012 is, subject to the provisions of paragraph 11, as follows:

(a) 28 per cent of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f) and (g)) or, in the case of such a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 35 per cent;

(b) in respect of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner of the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

$$y = 34 - \frac{170}{x}$$

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

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

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

(c) in respect of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner of the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 28 per

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cent, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;

- (d) in respect of the taxable income derived by any company from carrying on long-term insurance business in respect of its—
 - (i) individual policyholder fund, 30 per cent; and
 - (ii) company policyholder fund and corporate fund, 28 per cent;
- (e) in respect of the taxable income of any personal service provider, as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, 33 per cent;
- (f) in respect of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d), (e) and (g)) derived by a company which is not a resident, 33 per cent; and
- (g) in respect of the taxable income derived by a qualifying company contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero per cent.

5. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any public benefit organisation that has been approved by the Commissioner for the South African Revenue Service in terms of section 30(3) of the Income Tax Act, 1962, or any recreational club that has been approved by the Commissioner of the South African Revenue Service in terms of section 30A(2) of that Act is 28 per cent—

- (a) in the case of an organisation or club that is a company, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012; or
- (b) in the case of an organisation that is a trust, in respect of any year of assessment ending on 29 February 2012.

6. The rate of tax referred to in section 6(1) of this Act to be levied in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012 is, subject to the provisions of paragraph 11, set out in the table below:

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Taxable income	Rate of tax
Not exceeding R59 750	0 per cent of taxable income
Exceeding R59 750 but not exceeding R300 000	10 per cent of amount by which taxable income exceeds R59 750
Exceeding R300 000	R24 025 plus 28 per cent of amount by which taxable income exceeds R300 000

7. The rate of tax referred to in section 6(2) of this Act to be levied in respect of the taxable turnover of a person that is a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2012 is set out in the table below:

Taxable turnover	Rate of tax
Not exceeding R150 000	0 per cent of taxable turnover
Exceeding R150 000 but not exceeding R300 000	1 per cent of amount by which taxable turnover exceeds R150 000
Exceeding R300 000 but not exceeding R500 000	R1 500 plus 2 per cent of amount by which taxable turnover exceeds R300 000
Exceeding R500 000 but not exceeding R750 000	R5 500 plus 4 per cent of amount by which taxable turnover exceeds R500 000
Exceeding R750 000	R15 500 plus 6 per cent of amount by which taxable turnover exceeds R750 000

8. (a) (i) If a retirement fund lump sum withdrawal benefit accrues to a person in any year of assessment commencing on or after 1 March 2011, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum withdrawal benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2010 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa); and
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa);

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(dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in subitem (aa),

is set out in the table below:

Taxable income from lump sum benefits	Rate of tax
Not exceeding R22 500	0 per cent of taxable income
Exceeding R22 500 but not exceeding R600 000	18 per cent of taxable income exceeding R22 500
Exceeding R600 000 but not exceeding R900 000	R103 950 plus 27 per cent of taxable income exceeding R600 000
Exceeding R900 000	R184 950 plus 36 per cent of taxable income exceeding R900 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2010 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum withdrawal benefit contemplated in item (i)(aa); and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum (withdrawal) benefit contemplated in item (i)(aa).

(b) (i) If a retirement fund lump sum benefit accrues to a person in any year of assessment commencing on or after 1 March 2011, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that retirement fund lump sum benefit;
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2010 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa);

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- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa); and
- (dd) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum benefit contemplated in subitem (aa),
- is set out in the table below:

Taxable income from lump sum benefits	Rate of tax
Not exceeding R315 000	0 per cent of taxable income
Exceeding R315 000 but not exceeding R630 000	R0 plus 18 per cent of taxable income exceeding R315 000
Exceeding R630 000 but not exceeding R945 000	R56 700 plus 27 per cent of taxable income exceeding R630 000
Exceeding R945 000	R141 750 plus 36 per cent of taxable income exceeding R945 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2010 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa);
- (bb) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement fund lump sum benefit contemplated in item (i)(aa) ; and
- (cc) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement fund lump sum (withdrawal) benefit contemplated in item (i)(aa).

(c) (i) If a severance benefit accrues to a person in any year of assessment commencing on or after 1 March 2011, the rate of tax referred to in section 6(1) of this Act to be levied on that person in respect of taxable income comprising the aggregate of—

- (aa) that severance benefit;
- (bb) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the severance benefit contemplated in subitem (aa);

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- (cc) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2010 and prior to the accrual of the severance benefit contemplated in subitem (aa); and
- (dd) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the severance benefit contemplated in subitem (aa), is set out in the table below:

Taxable income from severance benefits	Rate of tax
Not exceeding R315 000	0 per cent of taxable income
Exceeding R315 000 but not exceeding R630 000	R0 plus 18 per cent of taxable income exceeding R315 000
Exceeding R630 000 but not exceeding R945 000	R56 700 plus 27 per cent of taxable income exceeding R630 000
Exceeding R945 000	R141 750 plus 36 per cent of taxable income exceeding R945 000

(ii) The amount of tax levied in terms of item (i) must be reduced by an amount equal to the tax that would be leviable on the person in terms of that item in respect of taxable income comprising the aggregate of—

- (aa) severance benefits received by or accrued to that person prior to the accrual of the severance benefit contemplated in item (1)(aa);
- (bb) retirement fund lump sum withdrawal benefits received by or accrued to that person on or after 1 March 2010 and prior to the accrual of the severance benefit contemplated in item (i)(aa); and
- (cc) retirement fund lump sum benefits received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the severance benefit contemplated in item (i)(aa).

9. The rates of tax set out in paragraphs 1, 3, 4, 5, 6 and 8 are the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.

10. The rate of tax set out in paragraph 7 is the rate required to be fixed by Parliament in accordance with the provisions of section 48B(1) of the Income Tax Act, 1962.

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11. For the purposes of this Appendix, income derived from mining for gold includes any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold and any other income which results directly from mining for gold.

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Appendix II

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

(Section 135)

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:		
.10		Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34,7 c/kg	34,7 c/kg
104.10	22.03	Beer made from malt:		
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82 c/li	7,82 c/li
.20		Other	R53,97/li aa	R53,97/li aa
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):		
	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
.02		Sparkling wine	R6,97/li	R6,97/li
.03		Unfortified wine of heading 22.04, with an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 16,5 per cent vol.	R2,32/li	R2,32/li
.04		Unfortified wine of heading 22.05, with an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 15 per cent vol.	R2,32/li	R2,32/li
.05		Fortified wine of heading 22.04 and 22.05 with an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
.06		Other	R93,03/li aa	R93,03/li aa
104.17	22.06	Other fermented beverages (for example cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
.03		Sparkling beverages	R6,97/li	R6,97/li
.05		Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82 c/li	7,82 c/li
.15		Other fermented beverages, unfortified, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2,71/li	R2,71/li
.16		Other fermented beverages, unfortified, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/li	R2,71/li
.17		Other fermented beverages, fortified, with an	R38,00/ li	R38,00/ li

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
		alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	aa	aa
.22		Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	R2,71/ li	R2,71/ li
.25		Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/ li	R2,71/ li
.90		Other	R93.03/li aa	R93.03/li aa
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength:		
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:		
.10		Wine spirits, manufactured by the distillation of wine	R93,03/ li aa	R93,03/ li aa
.15		Spirits, manufactured by the distillation of any sugar cane product	R93,03 /li aa	R93,03/ li aa
.25		Spirits, manufactured by the distillation of any grain product	R93,03/ li aa	R93,03/ li aa
.29		Other spirits	R93,03/ li aa	R93,03/ li aa
		Liqueurs and other spirituous beverages:		
.41		With an alcoholic strength by volume	R38,00/li	R38,00/ li

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
		exceeding 15 per cent vol. but not exceeding 23 per cent vol.	aa	aa
.42		Other	R93,03/ li aa	R93,03/ li aa
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:		
.10		Cigars, cheroots and cigarillos containing tobacco:		
		Imported from Switzerland	R2 196,65/ kg net	R2 196,65/ kg net
		Other	R2 196,65/ kg net	R2 196,65/ kg net
.20		Cigarettes containing tobacco		
		Imported from Switzerland	R4,87/10 cigarettes	R4,87/10 cigarettes
		Other	R4,87/10 cigarettes	R4,87/10 cigarettes
		Cigars, cheroots and cigarillos of tobacco substitutes:		
		Imported from Switzerland	R2 196,65/ kg net	R2 196,65/ kg net
		Other	R2 196,65/ kg net	R2 196,65/ kg net
		Cigarettes of tobacco substitutes:		
		Imported from Switzerland	R4,87/10 cigarettes	R4,87/10 cigarettes
		Other	R4,9/10 cigarettes	R4,9/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco;		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
		tobacco extracts and essences:		
.10		Smoking tobacco, whether or not containing tobacco substitutes in any proportions:		
		Pipe tobacco, in immediate packings of a content of less than 5 kg	R119,16/ kg net	R119,16/ kg net
		Other pipe tobacco	R119,16/ kg net	R119,16/ kg net
		Cigarette tobacco	R210,51/ kg	R210,51/ kg
		Other:		
		Other cigarette tobacco substitutes	R210,51/ kg	R210,51/ kg
.20		Other pipe tobacco substitutes	R119,16/ kg net	R119,16/ kg net

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Appendix III

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

(Section 135)

Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:		
104.01.10	1901.90.20	Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34,7c/kg	34,7c/kg
104.10	22.03	Beer made from malt:		
104.10.10	2203.00.05	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.10.20	2203.00.90	Other	R53,97/li aa	R53,97/li aa
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.15.01	2204.10	Sparkling wine:	R6,97/li	R6,97/li
	2204.21	In containers holding 2li or less:		
	2204.21.4	Unfortified wine:		
104.15.03	2204.21.41	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 16,5 per cent vol.	R2,32/li	R2,32/li
104.15.04	2204.21.42	Other	R93,03/li aa	R93,03/li aa
	2204.21.5	Fortified wine:		
104.15.05	2204.21.51	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.15.06	2204.21.52	Other	R93,03/li aa	R93,03/li aa
	2204.29	Other:		
	2204.29.4	Unfortified wine:		
104.15.07	2204.29.41	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 16,5 per cent vol.	R2,32/li	R2,32/li
104.15.08	2204.29.42	Other	R93,03/li aa	R93,03/li aa
	2204.29.5	Fortified wine:		
104.15.09	2204.29.51	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.15.10	2204.29.52	Other	R93,03/li aa	R93,03/li aa
104.16	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
	2205.10	In containers holding 2li or less:		
105.16.01	2205.10.10	Sparkling	R6,97/li	R6,97/li
	2205.10.2	Unfortified:		
104.16.03	2205.10.21	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 15 per cent vol.	R2,32/li	R2,32/li
104.16.04	2205.10.22	Other	R93,03/li aa	R93,03/li aa
	2205.10.3	Fortified:		
104.16.05	2205.10.31	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.16.06	2205.10.32	Other	R93,03/li aa	R93,03/li aa
	2205.90	Other:		
	2205.90.2	Unfortified:		
104.16.09	2205.90.21	With an alcoholic strength by volume exceeding 6,5 per cent vol. but not exceeding 15 per cent vol.	R2,32/li	R2,32/li
104.16.10	2205.99.22	Other	R93,03/li aa	R93,03/li aa
	2205.90.3	Fortified:		
104.16.11	2205.90.31	With an alcoholic strength by volume exceedubg 15 per cent vol. but not exceeding 22 per cent vol.	R4,33/li	R4,33/li
104.16.12	2205.90.32	Other	R93,03/li aa	R93,03/li aa
104.17	22.06	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
		beverages, not elsewhere specified or included:		
104.17.03	2206.00.05	Sparkling beverages	R6,97/li	R6,97/li
104.17.05	2206.00.15	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.17.15	2206.00.81	Other fermented beverages, unfortified, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2,71/li	R2,71/li
104.17.16	2206.00.82	Other fermented beverages, unfortified, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/li	R2,71/li
104.17.17	2206.00.83	Other fermented beverages, fortified, with an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.17.22	2206.00.85	Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2,71/li	R2,71/li
104.17.25	2206.00.87	Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2,71/li	R2,71/li
104.17.90	2206.00.90	Other	R93,03/li aa	R93,03/li aa
104.21	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume 80 per cent vol. or higher; ethyl alcohol and other		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
		spirits, denatured, of any strength:		
104.21.01	2207.10	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher	R93,03/li aa	R93,03/li aa
104.21.03	2207.20	Ethyl alcohol and other spirits, denatured, of any strength	R93,03/li aa	R93,03/li aa
104.23	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol.; spirits, liqueurs and other spirituous beverages:		
	2208.20	Spirits obtained by distilling grape wine or grape marc:		
104.23.01	2208.20.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.03	2208.20.90	Other	R93,03/li aa	R93,03/li aa
	2208.30	Whiskies:		
104.23.05	2208.30.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.07	2208.30.90	Other	R93,03/li aa	R93,03/li aa
	2208.40	Rum and other spirits obtained by distilling fermented sugarcane products:		
104.23.09	2208.40.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.09	2208.40.90	Other	R93,03/li aa	R93,03/li aa
	2208.50	Gin and Geneva:		
104.23.13	2208.50.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.23.15	2208.50.90	Other	R93,03/li aa	R93,03/li aa
	2208.60	Vodka:		
104.23.17	2208.60.10	In containers holding 2li or less	R93,03/li aa	R93,03/li aa
104.23.19	2208.60.90	Other	R93,03/li aa	R93,03/li aa
	2208.70	Liqueurs and cordials:		
	2208.70.2	In containers holding 2li or less:		
104.23.21	2208.70.21	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.23.22	2208.70.22	Other	R93,03/li aa	R93,03/li aa
	2208.70.9	Other:		
104.23.23	2208.70.91	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.23.24	2208.70.92	Other	R93,03/li aa	R93,03/li aa
	2208.90	Other:		
	2208.90.2	In containers holding 2li or less:		
104.23.25	2208.90.21	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa
104.23.26	2208.90.22	Other	R93,03/li aa	R93,03/li aa
	2208.90.9	Other:		
104.23.27	2208.90.91	With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38,00/li aa	R38,00/li aa

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.23.28	2208.90.92	Other	R93,03/li aa	R93,03/li aa
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:		
	2402.10	Cigars, cheroots and cigarillos, containing tobacco:		
104.30.01	2402.10.10	Imported from Switzerland	N/A	R2 196,65/ kg net
104.30.03	2402.10.90	Other	R2 196,65/ kg net	R2 196,65/ kg net
	2402.20	Cigarettes containing tobacco:		
104.30.05	2402.20.10	Imported from Switzerland	N/A	R4,87/10 cigarettes
104.30.07	2402.20.90	Other	R4,87/10 cigarettes	R4,87/10 cigarettes
	2402.90.1	Cigars, cheroots and cigarillos of tobacco substitutes:		
104.30.09	2402.90.12	Imported from Switzerland	N/A	R2 196,65/ kg net
104.30.11	2402.90.14	Other	R2 196,65/ kg net	R2 196,65/ kg net
	2402.90.2	Cigarettes of tobacco substitutes:		
104.30.13	2402.90.22	Imported from Switzerland	N/A	R4,87/10 cigarettes
104.30.15	2402.90.24	Other	R4,87/10 cigarettes	R4,87/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences:		

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Tariff Item	Tariff heading	Description	Rate of duty	
			Excise	Customs
	2403.10	Smoking tobacco, whether or not containing tobacco substitutes in any proportions:		
104.35.01	2403.10.10	Pipe tobacco, in immediate packings of a content of less than 5 kg	R119,16/ kg net	R119,16/ kg net
104.35.03	2403.10.20	Other pipe tobacco	R119,16/ kg net	R119,16/ kg net
104.35.05	2403.10.30	Cigarette tobacco	R210,51/ kg	R210,51/ kg
	2403.99	Other:		
104.35.07	2403.99.30	Other cigarette tobacco substitutes	R210,51/ kg	R210,51/ kg
104.35.09	2403.99.40	Other pipe tobacco substitutes	R119,16/ kg net	R119,16/ kg net