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RELEASE

The draft Taxation Laws Amendment Bill, 2012, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2012, 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 31 July 2012 to:

Ms Nomfanelo Mpotulo:
nomfanelo.mpotulo@treasury.gov.za

and

Ms Adele Collins
acollins@sars.gov.za

or fax to 012 315 5516

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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)

[B – 2012]

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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 a provision;
- amend the Income Tax Act, 1962, so as 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 provisions; and to make provision for continuations;
- amend the Income Tax Act, 1990, so as to effect technical corrections;
- amend the Value-Added Tax Act, 1991, so as to amend certain provisions;
- amend the Unemployment Insurance Contributions Act, 2002, so as to amend a provision;
- amend the Securities Transfer Tax Act, 2007, so as to amend certain provisions; and to effect a consequential amendment;
- amend the Revenue Laws Amendment Act, 2008, so as to effect technical corrections;
- amend the Taxation Laws Amendment Act, 2009, so as to effect technical corrections;
- amend the Taxation Law Amendment Act, 2010, so as to effect technical corrections;
- amend the Taxation Law Amendment Act, 2011, so as to repeal a provision; and to effect technical corrections;

and to provide for matters connected therewith.

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

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, 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, section 3 of Act 7 of 2010 and section 5 of Act 24 of 2011

1. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (19) of the following subsection:

“(19) No duty shall be payable by a natural person—

- (a) on **[the conversion in terms of]** any transaction contemplated in Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), in terms of which any right to or interest in the use of immovable property conferred by reason of the ownership of a share held by that person in a share block company as **[contemplated]** defined in section 1 of that Act[,], is converted to ownership **[in the unit in respect of which that person had the right of use, if the acquisition of that share was subject to duty in terms of this Act]** by that person of that immovable property; or
- (b) on the acquisition by that person of a specified part of the immovable property of a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), where that person had a right of exclusive use of that specified part, which right was conferred by reason of the ownership of a share held by that person in that share block company,

if the acquisition of that share was subject to duty in terms of this Act.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisitions made on or after that date.

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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 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 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 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, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011 and item 23 of Schedule to Tax Administration Act, 2011

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

(a) by the addition to paragraph (e) of the definition of “company” of the following subparagraph:

“(iii) portfolio of a collective investment scheme in property; or”;

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

“(ii) any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) of which such natural person or such relative is a beneficiary;”;

(c) by the substitution in the definition of “connected person” for paragraph (bA) of the following paragraph:

“(bA) in relation to a connected person in relation to a trust (other than a portfolio of a collective investment scheme in property [shares managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Part V of that Act and other than] or a portfolio of a collective investment scheme in securities), includes any other person who is a connected person in relation to such trust;”;

(d) by the substitution in the definition of “connected person” for item (bb) of paragraph (d)(vi) of the following item:

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- “(bb) any relative of such member or any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) which is a connected person in relation to such member; and”;
- (e) by the insertion after the definition of “date of sequestration” of the following definition:
“**‘debt’** means any amount owing by or to a person;”;
- (f) by the substitution for the definition of “equity share” of the following definition:
“**‘equity share’** means any share in a company[, **excluding any share that, neither as respects dividends nor as respects returns of capital, carries any right to participate beyond a specified amount in a distribution**] unless—
(a) the amount of any dividend or foreign dividend in respect of that share is based on or determined with reference to the time value of money;
(b) the issuer of that share is obliged to redeem that share in whole or in part; or
(c) that share may at the option of the holder be redeemed in whole or in part;”;
- (g) by the deletion in the definition of “foreign dividend” of item (ii) of the exclusion;
- (h) by the addition to the definition of “foreign dividend” after item (ii) of the exclusion of the following item:
“(iii) constitutes a share in that foreign company;”;
- (i) by the insertion after the definition of “foreign equity instrument” of the following definition:
“**‘foreign investment entity’** means any company or trust—
(a) that is not incorporated, established or formed in the Republic;
(b) that carries on the business of an investment scheme, where that business—
(i) is similar to that of a portfolio of a collective investment scheme; and
(ii) is carried on outside the Republic in pursuance of any arrangement in terms of which members of the public (as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)) are invited or permitted to contribute to and hold participatory interests in that company or trust through shares, units or any other form of participatory interest;
(c) the assets of which consist solely of one or more of the following:
(i) amounts in cash or that constitute cash equivalents;
(ii) financial instruments issued by a listed company;
(iii) financial instruments, the value of which are determined with reference to financial instruments issued by a listed company; or
(iv) rights to receive any asset contemplated in subparagraph (i), (ii) or (iii);

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- (d) where no more than 10 per cent of the shares, units or other form of participatory interest in that company or trust are directly or indirectly held by persons who are residents; and
- (e) where that company or trust has no employees and has no directors or trustees that are engaged in the management of that company or trust on a full-time basis;”;
- (j) by the insertion after the definition of “foreign return of capital” of the following definition:
“ **‘foreign tax year’**, in relation to a company that is incorporated, established or formed in a country other than the Republic or that has its place of effective management outside the Republic, means any year or period of reporting for foreign income tax purposes by that company or, if that company is not subject to foreign income tax, any annual period of financial reporting by that company;”;
- (k) by the deletion of the definition of “government grant”;
- (l) by the deletion of the definition of “government scrapping payment”;
- (m) by the substitution in the definition of “gross income” for paragraph (ii) of the following paragraph:
“(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within **[or deemed to be within]** the Republic;”;
- (n) 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 annuity, including any amount contemplated in the definition of ‘living annuity’ or the definition of ‘annuity amount’ in section 10A(1), other than an amount contemplated in paragraph (d)(ii) or (iii) or (m);”;
- (o) by the substitution in paragraph (m) of the definition of “gross income” for the proviso of the following proviso:
“: Provided that [—]
[(i) any amount so received or accrued shall be reduced by the amount of any such loan or advance which is or has been included in the taxpayer’s gross income;
[(ii) **to the extent that paragraph (a) or (d) of this definition applies to an amount, this paragraph does not apply to that amount;]**”;
- (p) by the insertion after the definition of “hotel keeper” of the following definition:
“ **‘IFRS’** means the International Financial Reporting Standards of the International Accounting Standards Board;”;
- (q) by the substitution in paragraph (c) of the definition of “pension preservation fund” for the words preceding the proviso of the following words:

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“with the exception of amounts transferred to any other pension fund **[or]**, pension preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund”;

(r) by the substitution in the definition of “person” for paragraph (d) of the following paragraph:

“(d) any portfolio of a collective investment scheme **[other than a portfolio of a collective investment scheme in property]**,”;

(s) by the substitution in paragraph (c) of the definition of “provident preservation fund” for the words preceding the proviso of the following words:

“with the exception of amounts transferred to any pension fund, pension preservation fund, other provident fund **[or]**, provident preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund”;

(t) by the insertion after the definition of “regulation” of the following definition:

“ **‘REIT’** means a company if—

(a) that company is a resident and the shares of that company are listed on an exchange (as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of that Act) as shares of a real estate investment trust as defined in the JSE Limited Listings Requirements; or

(b) the shares of that company are not listed as contemplated in paragraph (a) and that company is a property subsidiary as defined in the JSE Limited Listings Requirements in relation to a company contemplated in paragraph (a);”;

(u) by the substitution in the definition of “resident” for the words following paragraph (b) of the following words:

“but does not include—

(A) any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation; or

(B) any company if—

(AA) that company is incorporated, established or formed in a country other than the Republic;

(BB) that company has its place of effective management in the Republic;

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(CC) that company would, but for the company having its place of effective management in the Republic, be a controlled foreign company with a foreign business establishment as defined in section 9D(1); and

(DD) the aggregate amount of tax payable to all spheres of government of any country other than the Republic by that company in respect of any foreign tax year of that company is at least 75 per cent of the amount of normal tax that would have been payable in respect of any taxable income of that company had that company, but for this subitem (B), been a resident for that foreign tax year;”;

(v) by the addition of the following proviso to the definition of “resident”:

“: Provided that where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident”;

(w) by the addition to the definition of “resident” of the following further proviso:

“: Provided further that in determining whether a person that is a foreign investment entity has its place of effective management in the Republic, no regard must be had to any activity that—

(a) constitutes—

(i) a financial service as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or

(ii) any service that is incidental to a financial service contemplated in subparagraph (i) where the incidental service is in respect of a financial product that is exempted from the provisions of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) as contemplated in section 1(2) of that Act; and

(b) is carried on by a financial service provider as defined in section 1 of that Act in terms of a licence issued to that financial service provider under section 8 of that Act”;

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

“ ‘share’ means, in relation to any company contemplated in paragraph (a), (b), (e) or (f) of the definition of ‘company’, any [share or similar equity interest] unit into which the proprietary interest in that company is divided;”;

(y) by the substitution in the definition of “special trust” for paragraphs (a) and (b) of the following paragraphs:

“(a) solely for the benefit of [a person who suffers from—

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(i) any ‘mental illness’ as defined in section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002); or

(ii) any serious physical disability,]

one or more persons who is or are persons with a disability as defined in section 18(3)

where such [illness or] disability incapacitates such person or persons from earning sufficient income for [the] their maintenance [of such person], or from managing [his or her] their own financial affairs: Provided that—

(aa) [where the person for whose benefit the trust was so created dies,] such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date [of such person’s death] on which all such persons are deceased; and

(bb) where such trust is created for the benefit of more than one person, all persons for whose benefit the trust is created must be relatives in relation to each other; or

(b) by or in terms of the will of a deceased person, solely for the benefit of beneficiaries who are relatives in relation to that deceased person and who are alive on the date of death of that deceased person (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust under the age of [21] 18 years;” and

(z) by the substitution in the definition of “spouse” for the proviso of the following proviso:

“: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union [without] out of community of property”.

(2) Paragraphs (a), (r) and (t) of subsection (1) come into operation on a date determined by the Minister of Finance by notice in the *Gazette* and apply in respect of years of assessment commencing on or after that date.

(3) Paragraphs (b), (c) and (d) 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.

(4) Paragraph (e) of subsection (1) comes into operation on 1 January 2013.

(5) Paragraph (f) of subsection (1) comes into operation on 1 January 2013.

(6) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 March 2012.

(7) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 January 2011.

(6) Paragraphs (i) and (w) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

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(7) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of foreign tax years ending during years of assessment commencing on or after that date.

(8) Paragraphs (k) and (l) of subsection (1) are deemed to have come into operation on 1 January 2012 and apply in respect of years of assessment commencing on or after that date.

(9) Paragraph (m) of subsection (1) is deemed to have come 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.

(10) Paragraphs (n) and (o) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts received or accrued on or after that date.

(11) Paragraph (p) of subsection (1) comes into operation on 1 January 2013.

(12) Paragraphs (q) and (s) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts payable on or after that date.

(13) Paragraph (u) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(14) Paragraph (v) of subsection (1) is deemed to have come into operation on 8 May 2012 and applies in respect of any person that ceases to be a resident on or after that date.

(15) Paragraph (x) of subsection (1) comes into operation on 1 January 2013.

(16) Paragraphs (y) and (z) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

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, section 7 of Act 18 of 2009 and section 11 of Act 24 of 2011

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

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

“: Provided that—

- (i) where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or trust, shall be deemed to have been payable by such resident; and

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(ii) for the purposes of this subsection, the amount so included in such resident's taxable income must be determined without regard to section 10B(3)"; and

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

“(1C) For the purpose of determining the taxable income derived by any resident from carrying on any trade, there [**shall**] may at the election of the resident be allowed as a deduction from the income of such resident so derived the sum of any taxes on income (other than taxes contemplated in subsection (1A)) proved to be payable by that resident to any sphere of government of any country other than the Republic, without any right of recovery by any person other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation—

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

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts that become payable during years of assessment commencing on or after that date.

Amendment of section 6quin of Act 58 of 1962, as inserted by section 12 of Act 24 of 2011 and amended by section 13 of Act 24 of 2011

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

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

“(b) imposed by any sphere of government of any country—

(aa) other than the Republic; and

(bb) with which the Republic has not concluded an agreement for the avoidance of double taxation,

in terms of the laws of that country,”; and

(b) by the addition of the following subsection:

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“(5) Where, during any year of assessment, a rebate has been deducted in terms of this section from the normal tax payable by a resident as a result of any amount of tax having been—

(a) levied and withheld as contemplated in subsection (1)(a); or

(b) imposed as contemplated in subsection (1)(b),

and, in any year of assessment subsequent to that year of assessment the resident—

(i) receives any amount by way of refund in respect of the amount of tax so levied and withheld; or

(ii) is discharged from any liability in respect of the amount of tax so imposed, so much of the amount so received or the amount of that discharge as does not exceed that rebate must be deemed to be an amount of normal tax payable by that resident in respect of that subsequent year of assessment.”.

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

Repeal of section 6sex of Act 58 of 1962

5. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 6sex.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 6A of Act 58 of 1962, as inserted by section 10 of Act 24 of 2011 and amended by section 3 of Bill 10 of 2012

6. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 6A of the following section:

“Medical scheme fees tax credit

6A. (1) A rebate, to be known as the medical scheme fees tax credit, must be deducted from the normal tax payable by a [taxpayer] person who is a natural person[, **unless the taxpayer is entitled to a rebate under section 6(2)(b)**].

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

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

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(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) The amount of the medical scheme fees tax credit must be—

(i) R230, in respect of benefits to the **[taxpayer] person**;

(ii) R460, in respect of benefits to the **[taxpayer] person** and one dependant; or

(iii) R460, in respect of benefits to the **[taxpayer] person** and one dependant, plus R154 in respect of benefits to each additional dependant,

for each month in that year of assessment in respect of which those fees are paid.

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

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

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

(4) For the purposes of this section a ‘**dependant**’ in relation to a **[taxpayer] person** means a ‘dependant’ as defined in section 1 of the Medical Schemes Act, 1998 (Act No. 131 of 1998).”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 6B in Act 58 of 1962

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

“Additional medical expenses tax credit

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

‘child’ means the person’s child or child of his or her spouse who was alive during any portion of the year of assessment, and who on the last day of the year of assessment—

(a) was unmarried and was or would, had he or she lived, have been—

(i) under the age of 18 years;

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(ii) under the age of 21 years and was wholly or partially dependent for his or her maintenance upon the person and has not become liable for the payment of normal tax in respect of that year; or

(iii) under the age of 26 years and was wholly or partially dependent for his or her maintenance upon the person and has not become liable for the payment of normal tax in respect of that year and was a full-time student at an educational institution of a public character; or

(b) in the case of any other child, was incapacitated by a disability from maintaining himself or herself and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of that year;

‘dependant’ means—

(a) a person’s spouse;

(b) a person’s child and the child of his or her spouse;

(c) any other member of a person’s family in respect of whom he or she is liable for family care and support; and

(d) 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 section 6A(2)(a)(i) or (ii),

at the time the fees contemplated in section 6A(2)(a) were paid, the amounts contemplated in paragraph (a) and (b) of the definition of ‘qualifying medical expenses’ were paid or the expenditure contemplated in paragraph (c) of that definition was incurred and paid;

‘disability’ means a moderate to severe limitation of any person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—

(a) has lasted or has a prognosis of lasting more than a year; and

(b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner;

‘qualifying medical expenses’ means—

(a) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment to any duly registered—

(i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopedist for professional services rendered or medicines supplied to the person or any dependant of the person; or

(ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a

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nurse, midwife or nursing assistant) in respect of the illness or confinement of the person or any dependant of the person; or

(iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the person or any dependant of the person;

(b) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the person or any dependant of the person, and which are substantially similar to the services and medicines in respect of which a deduction may be made under paragraph (a); and

(c) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by a person or his or her spouse) necessarily incurred and paid by the person during the year of assessment in consequence of any physical impairment or disability suffered by the person or any dependant of the person.

(2) A rebate, to be known as the additional medical expenses tax credit, must be deducted from the normal tax payable by a person who is a natural person.

(3) The amount of the additional medical expenses tax credit must be—

(a) where the person is entitled to a rebate under section 6(2)(b), the aggregate of—

(i) 33,3 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

(ii) 33,3 per cent of the amount of qualifying medical expenses paid or incurred and paid by the person;

(b) where the person, his or her spouse or his or her child is a person with a disability, the aggregate of—

(i) 33,3 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

(ii) 33,3 per cent of the amount of qualifying medical expenses paid or incurred and paid by the person; or

(c) in any other case, so much of the aggregate of—

(i) 25 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds four

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times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

(ii) 25 per cent of the amount of qualifying medical expenses paid or incurred and paid by the person,

as exceeds 7,5 per cent of the person's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit).

(4) For the purposes of this section, any amount contemplated in subsection (3) or the definition of 'qualifying medical expenses' 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.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 7B in Act 58 of 1962

8. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 7A of the following section:

“Time of accrual of variable remuneration

7B. (1) For the purposes of this section—

‘employee’ means an employee as defined in paragraph 1 of the Fourth Schedule;

‘employer’ means an employer as defined in paragraph 1 of the Fourth Schedule;

‘variable remuneration’ means—

(a) overtime pay, bonus or commission contemplated in the definition of ‘remuneration’ in paragraph 1 of the Fourth Schedule;

(b) an allowance or advance paid in respect of transport expenses as contemplated in section 8(1)(b)(ii);

(c) any amount which an employer has during any year of assessment become liable to pay to an employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by the employee during that year.

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(2) In determining the taxable income derived by any person during a year of assessment, any amount to which an employee becomes entitled from an employer in respect of variable remuneration is deemed to—

(a) accrue to the employee; and

(b) constitute expenditure incurred by the employer,

on the date during the year of assessment on which the amount is paid to the employee by the employer.”.

(2) Subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts accrued or expenditure incurred 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, section 10 of Act 7 of 2010 and section 16 of Act 24 of 2011

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

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

“(iv) The provisions of this paragraph shall not apply in respect of any amount paid or granted as an allowance or advance that is received by or accrued to a person in respect of—

(aa) the holding of a public office by that person as contemplated in section 9[(1)(e)]

(2)(g); or

(bb) services rendered or work or labour performed by that person as contemplated in section 9(2)(h),

if that person is stationed outside the Republic [which] and that amount is attributable to [that person’s] services rendered by that person outside the Republic.”; and

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

“: Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been—

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- (i) included in the gross income of such taxpayer in terms of paragraph (jA) of the definition of ‘gross income’;
 - (ii) applied to reduce any cost or expenditure incurred by such taxpayer in terms of section 19(3); or
 - (iii) applied to reduce any balance of assessed loss in terms of section 19(4)”
- (c) by the deletion in subsection (4) of paragraph (m);
- (d) by the addition to subsection (4) after paragraph (n) of the following paragraphs:
- “(o) For the purposes of paragraph (a), where during any year of assessment a government grant is received for the purpose of acquiring trading stock or to defray expenditure in respect of the acquisition of trading stock, any amount by which the government grant exceeds the expenditure incurred in respect of the acquisition of that trading stock must be deemed to be an amount recovered or recouped by the taxpayer.
- (p) For the purposes of paragraph (a), where during any year of assessment a government grant is received for the purpose of acquiring an allowance asset as defined in section 42(1) or to defray expenditure in respect of the acquisition of such an allowance asset, any amount by which the government grant exceeds the expenditure incurred in respect of the acquisition of that asset must be deemed to be an amount recovered or recouped by the taxpayer.”.

(2) Paragraph (a) of subsection (1) is deemed to have come 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.

(3) Paragraphs (b) and (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraph (d) of subsection (1) comes into operation on 1 January 2013 and applies in respect of grants received on or after that date.

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, section 13 of Act 7 of 2010 and section 20 of Act 24 of 2011

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

(a) by the addition in subsection (1) to the definition of “date of issue” of the following paragraph after paragraph (a):

“(b) the date on which the holder at any time after the share is issued acquires a right of disposal in respect of that share, otherwise than as a result of the acquisition of that share by that holder;”;

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

“(a) any share other than an equity share which the relevant company is obliged to redeem in whole or in part within a period of three years from the date of issue thereof, or which may at the option of the holder be redeemed in whole or in part within the said period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or”;

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

“(i) the holder has a right of disposal in respect of such share which may be exercised within a period of three 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 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”;

(d) by the deletion in subsection (1) of the word “or” at the end of paragraph (b)(ii)(cc) of the definition of “hybrid equity instrument”;

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

(f) by the addition to subsection (1) of the following definition after the definition of “hybrid equity instrument”:

“ ‘right of disposal’ means a right which the holder of a share has to require any party—

(a) to acquire that share from that holder; or

(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 years from the date of issue thereof.”; and

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

“(2) Any dividend or foreign dividend received by or accrued to a person in respect of a hybrid equity instrument which is received by or accrues to that person on or after the date that the share becomes a hybrid equity instrument must be deemed in relation to that person only to be an amount of interest accrued to that person.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of dividends or foreign dividends received or accrued on or after that date.

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Substitution of section 8E of Act 58 of 1962

11. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 8E of the following section:

“Dividends on certain shares deemed to be interest in relation to recipients thereof

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

‘date of issue’, in relation to a share in a company, means—

- (a) the date on which the share is issued by the company;
- (b) the date on which the company at any time after the share has been issued undertakes the obligation to redeem that share in whole or in part; and
- (c) the date on which the holder of the share at any time after the share has been issued obtains the right to require that share to be redeemed in whole or in part, otherwise than as a result of the acquisition of that share by that holder;

‘financial instrument’ means any—

- (a) interest-bearing arrangement; or
- (b) financial arrangement based on or determined with reference to the time value of money;

‘hybrid equity instrument’ means—

- (a) any share, other than an equity share, if—
 - (i) the issuer of that share is obliged to redeem that share in whole or in part; or
 - (ii) that share may at the option of the holder be redeemed in whole or in part, within a period of three years from the date of issue of that share;
- (b) any share, other than a share contemplated in paragraph (a), if—
 - (i) (aa) the issuer of that share is obliged to redeem that share in whole or in part within a period of three years from the date of issue of that share;
 - (bb) that share may at the option of the holder be redeemed in whole or in part within a period of three years from the date of issue of that share; or
 - (cc) at any time on the date of issue of that share, the existence of the company issuing that share—
 - (A) is to be terminated within a period of three years; or
 - (B) is likely to be terminated within a period of three years upon a reasonable consideration of all the facts at that time; and
 - (ii) (aa) that share does not rank *pari passu* as regards its participation in

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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

(bb) any dividend or foreign dividend payable on such share is to be calculated directly or indirectly with reference to any specified rate of interest or the time value of money; or

(c) any share if—

(i) any dividend or foreign dividend payable on that share is to be calculated directly or indirectly with reference to any specified rate of interest or the time value of money; and

(ii) that share is—

(aa) secured by a financial instrument; or

(bb) subject to an arrangement in terms of which a financial instrument may not be disposed of,

unless the consideration received by or accrued to the issuer of that share was applied directly or indirectly solely—

(A) for the purpose of acquiring an equity share in an operating company, other than an operating company that forms part of the same group of companies as that issuer immediately before that acquisition;

(B) in partial or full settlement of any debt incurred for the purpose of directly or indirectly acquiring a share as contemplated in subparagraph (A) or in partial or full settlement of any interest accrued on such debt; or

(C) for the purpose of acquiring or redeeming any preference share as defined in section 8EA(1) if—

(AA) that preference share was issued for any purpose contemplated in subparagraph (A) or (B); and

(BB) that consideration does not exceed the amount outstanding in respect of that preference share, being—

(AAA) the consideration received by or accrued to that issuer for the issue of; and

(BBB) any amount of dividends or interest accrued in respect of, that preference share.

‘operating company’ means—

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(a) any company that carries on business continuously, and in the course or furtherance of that business provides goods or services for consideration;

(b) any company that is a controlling group company in relation to a company contemplated in paragraph (a); or

(c) any company that is a listed company;

‘preference share’ means any share other than an equity share.

(2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share must be deemed in relation to that person only to be an amount of income accrued to that person if that share constitutes a hybrid equity instrument at any time during that year of assessment.”.

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

Amendment of section 8E of Act 58 of 1962, as substituted by section 11 of this Act

12. (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) of paragraph (b) of the definition of “hybrid equity instrument” of the following words:
“any share [**other than a share contemplated in paragraph (a),**] if—”;
- (c) by the substitution in subsection (1) for the word “and” at the end of subitem (B) of paragraph (b)(i)(cc) of the definition of “hybrid equity instrument” of the word “or”; and
- (d) by the deletion in subsection (1) of subparagraph (ii) of paragraph (b) of the definition of “hybrid equity instrument”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of dividends or foreign dividends received or accrued on or after that date.

Insertion of section 8EA in Act 58 of 1962

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

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“Dividends on third-party backed shares deemed to be income in relation to recipients thereof

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

‘enforcement obligation’ in relation to a share means any obligation, whether fixed or contingent, of any person other than the issuer of that share to—

- (a) acquire the share from the holder of that share;
- (b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or
- (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

‘enforcement right’ in relation to a share means any right, whether fixed or contingent, of the holder of that share or of any person that is a connected person in relation to that holder to require any person other than the issuer of that share to—

- (a) acquire that share from the holder;
- (b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or
- (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

‘operating company’ means an operating company as defined in section 8E(1);

‘preference share’ means a preference share as defined in section 8E(1);

‘third-party backed share’ means any share in respect of which an enforcement right is exercisable or an enforcement obligation is enforceable as a result of any amount of any specified dividend, foreign dividend, return of capital or foreign return of capital attributable to that share not being received by or accruing to the person holding that share: Provided that, where the consideration received by or accrued to the issuer of a share (which, but for this proviso, would have constituted a third-party backed share) was applied directly or indirectly solely—

- (a) for the purpose of acquiring an equity share in an operating company, other than an operating company that forms part of the same group of companies as that issuer immediately before that acquisition;
- (b) in partial or full settlement of any—
 - (i) debt incurred for the purpose of directly or indirectly acquiring an equity share in an operating company, other than an operating company that forms part of the same group of companies as that issuer immediately before that acquisition; or

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- (ii) interest accrued on any debt contemplated in subparagraph (i); or
 - (c) for the purpose of acquiring or redeeming any preference share if—
 - (i) that preference share was issued for any purpose contemplated in paragraphs (a) or (b); and
 - (ii) that consideration does not exceed the amount outstanding in respect of that preference share, being—
 - (aa) the consideration received by or accrued to that issuer for the issue of; and
 - (bb) any amount of dividends or interest accrued in respect of, that preference share,
- in determining whether—
- (A) an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that share has an enforcement right in respect of that share and that right is exercisable only against—
 - (AA) that operating company;
 - (BB) any other issuer of a preference share if the consideration received by or accrued to that other issuer as consideration for the issue of that preference share by that other issuer is applied solely for the purpose of acquiring an equity share in an operating company and that equity share in that operating company was acquired indirectly by that issuer in the circumstances contemplated in paragraph (a) or (b);
 - (CC) any person that directly or indirectly holds at least 20 per cent of the equity shares in—
 - (AAA) that operating company;
 - (BBB) the issuer; or
 - (CCC) the other issuer contemplated in subparagraph (BB); or
 - (DD) any company that is a controlled group company in relation to—
 - (AAA) that operating company;
 - (BBB) the issuer; or
 - (CCC) the other issuer contemplated in subparagraph (BB),
 - if other enforcement rights are exercisable against the controlling group company in relation to that controlled group company and those other enforcement rights are of equivalent or greater strength than the enforcement right against that controlled group company; and
- (B) an enforcement obligation is enforceable in respect of that share, no regard must be had to any arrangement in terms of which that obligation is enforceable by the holder of that share only against—

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(AA) that operating company;

(BB) any other issuer of a preference share if the consideration received by or accrued to that other issuer as consideration for the issue of that preference share by that issuer is applied solely for the purpose of acquiring an equity share in an operating company, and that equity share in that operating company was acquired indirectly by that issuer in the circumstances contemplated in paragraph (a) or (b);

(CC) any person that directly or indirectly holds at least 20 per cent of the equity shares in—

(AAA) that operating company;

(BBB) the issuer; or

(CCC) the other issuer contemplated in subparagraph (BB); or

(DD) any company that is a controlled group company in relation to—

(AAA) that operating company;

(BBB) the issuer; or

(CCC) the other issuer contemplated in subparagraph (BB),

if other enforcement obligations are enforceable against the controlling group company in relation to that controlled group company and those other enforcement obligations are equally or more burdensome than the enforcement obligation against that controlled group company.

(2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share must be deemed in relation to that person only to be an amount of income received by or accrued to that person if that share constitutes a third-party backed share at any time during that year of assessment.”.

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

Substitution of section 8F of Income Tax Act 58 of 1962

14. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 8F of the following section:

“Amounts paid, incurred, received or accrued in respect of hybrid debt instruments deemed to be in respect of a share

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

‘domestic company’ means any company contemplated in paragraph (a) or (f) of the definition of ‘company’ in section 1;

‘hybrid debt’ means any debt, if—

(a) the issuer of that debt—

(i) is not, or is entitled to exercise any option as a result of which that issuer will not be, obliged to repay that debt in full within 30 years of the date of issue of that debt; or

(ii) is, or is entitled to exercise any option as a result of which that issuer will be, obliged to—

(aa) convert that debt (or any part thereof) to; or

(bb) exchange that debt (or any part thereof) for,

shares in that issuer or in any other company that forms part of the same group of companies as that issuer;

(b) the holder of that debt is obliged to—

(i) convert that debt (or any part thereof) to;

(ii) exchange that debt (or any part thereof) for; or

(iii) receive repayment of that debt (or any part thereof) in the form of,

shares in the issuer or in any company that forms part of the same group of companies as that issuer;

(c) on a balance of probabilities, that debt will not be repaid in full within 30 years of the date of issue of that debt; or

(d) the obligation to make payment of that debt or any part thereof is conditional upon the solvency or the liquidity of the issuer of that debt,

but does not include any debt issued by a company—

(i) if the market value of all the assets of that company do not exceed R10 million; or

(ii) that is a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), and that debt constitutes primary share capital or secondary capital as defined in section 1 of that Act.

(2) Any hybrid debt issued by a domestic company must, in relation to—

(a) the issuer of that hybrid debt, be deemed to be a share (other than an equity share) issued by that issuer; and

(b) the holder of that hybrid debt, be deemed to be a share (other than an equity share) held by that holder.

(3) Any amount—

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- (a) paid or incurred by the issuer of a hybrid debt in respect of that hybrid debt must be deemed to be an amount paid or incurred by that issuer; or
- (b) received or accrued by the holder of a hybrid debt in respect of that hybrid debt must be deemed to be an amount received or accrued by that holder,
- in respect of a share other than an equity share.

(4) For the purposes of the definition of ‘contributed tax capital’, the amount received by or accrued to a domestic company for the issue of a debt that constitutes a share in terms of the definition of ‘hybrid debt’ and subsection (2) is an amount equal to the amount outstanding in respect of that debt at the time that the debt becomes a hybrid debt.’.

(2) Subsection (1) comes into operation on 1 January 2014.

Insertion of section 8FA in Income Tax Act 58 of 1962

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

“Hybrid interest deemed to be dividend

8FA. (1) For the purposes of this section, any word or expression that has been defined in section 8F must bear the same meaning as defined in that section, and ‘hybrid interest’ means any interest paid by the issuer of a debt in respect of that debt if—

- (a) the amount of that interest is not determined with reference to the time value of money;
- (b) the obligation to make payment of that interest or any portion thereof is conditional upon the solvency or the liquidity of that issuer; or
- (c) that issuer is obliged, or is entitled to exercise any option as a result of which that issuer will be entitled, to make payment of that interest in the form of shares in the issuer (or in any company that forms part of the same group of companies as the issuer.

(2) Subject to subsection (3)—

- (a) any amount of hybrid interest incurred by the issuer of a debt in respect of that debt must, in relation to that issuer and the holder of that debt, be deemed for the purposes of Part VIII of Chapter II to be a dividend paid by that issuer that constitutes a distribution of an asset *in specie*; and
- (b) where an amount of hybrid interest is, in terms of paragraph (a), deemed to be a dividend paid that constitutes a distribution of an asset *in specie*—

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- (i) that dividend must be deemed to have been paid on the earlier of the date on which that amount is received by or accrues to the holder of that hybrid debt; and
- (ii) that amount must not be taken into account for the purposes of section 24J.

(3) Subsection (2) does not apply to the extent that hybrid interest paid as contemplated in that subsection is deemed to be a dividend in terms of section 8F.”.

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of interest paid 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, section 15 of Act 7 of 2010 and section 24 of Act 24 of 2011

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

- (a) by the insertion in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “qualifying share”;
- (b) by the substitution in subsection (1) for the expression “; or” at the end of paragraph (b) of the definition of “qualifying share” of a full stop; and
- (c) by the deletion in subsection (1) of paragraph (c) of the definition of “qualifying share”.

(2) Subsection (1) comes into operation on 1 January 2013.

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, section 16 of Act 7 of 2010 and section 25 of Act 24 of 2011

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

- (a) by the deletion in subsection (1) of the definition of “foreign tax year”;
- (b) by the substitution in subsection (2A) for paragraph (f) of the proviso of the following paragraph:

“(f) where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign company shall, for the purposes of paragraph 10 of the Eighth Schedule, be [25] 33,3 per cent of that company’s net capital gain for the relevant foreign tax year;”;

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(c) by the substitution in subsection (2A) for subparagraph (ii) of the further proviso of the following subparagraph:

“(ii) the aggregate amount of tax payable by a controlled foreign company in respect of a foreign tax year of that controlled foreign company as contemplated in subparagraph (i) must be determined—

(aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; **[and]**

(bb) after disregarding any loss in respect of a year other than **[a]** that foreign tax year [contemplated in subparagraph (i)] or from a company other than **[a]** that controlled foreign company [contemplated in subparagraph (i)]; and

(cc) before taking into account any amount which would, had that controlled foreign company been a resident for that foreign tax year, have been included in the income of that controlled foreign company in terms of subsection (2) for that foreign tax year.”;

(d) by the insertion in subsection (9) after paragraph (c) of the following paragraph:

“(d) is subject to—

(i) the withholding tax on interest in terms of Part IA; or

(ii) the withholding tax on royalties in terms of Part IVA,

after taking into account any applicable agreement for the prevention of double taxation;”;

(e) by the substitution in subsection (9A)(a)(iii)(cc) for the words following subitem (B) of the following words:

“other than amounts in respect of which paragraphs (e) to (fB) of subsection (9) apply, **[does not exceed]** exceeds five per cent of the total of all amounts received by or accrued to the controlled foreign company that are attributable to that foreign business establishment;”;

(f) by the substitution in subsection (9A)(a)(iv) for the word “and” at the end of item (aa) of the word “or”; and

(g) by the substitution in subsection (9A)(a) for subparagraphs (v) and (vi) of the following subparagraphs:

“(v) arises in respect of the use or right of use of or permission to use 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 constitutes tainted intellectual property as defined in section 23I;

(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

(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”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of foreign tax years ending during years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

(4) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment ending on or after that date.

(5) Paragraph (d) of subsection (1) comes into operation on 1 January 2013 and applies in respect of amounts that are paid or that become payable during foreign tax years ending during years of assessment commencing on or after that date.

(6) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

(7) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

(8) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

Repeal of section 9E of Act 58 of 1962

18. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 9E.

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(2) Subsection (1) is deemed to have come into operation on 21 October 2008.

Amendment of section 9H of Act 58 of 1962, as inserted by section 26 of Act 24 of 2011

19. (1) Section 9H 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:

“Subject to subsection (3), where a person that is a resident ceases to be a resident or becomes a headquarter company, that person must be treated as having—”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Substitution of section 9H of Act 58 of 1962

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

“Change of residence, ceasing to be controlled foreign company or becoming headquarter company

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

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

‘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 (4), where a person (other than a company) that is a resident ceases during any year of assessment of that person to be a resident—

(a) that person must be treated as having—

(i) disposed of each of that person’s assets on the date immediately before the day on which that person so ceases to be a resident for an amount received or accrued equal to the market value of the asset on that date; and

(ii) reacquired each of those assets on the day on which that person ceases to be a resident and at an expenditure equal to the market value contemplated in subparagraph (i);

(b) that year of assessment must be deemed to have ended on the date immediately before the day on which that person so ceases to be a resident; and

(c) the next succeeding year of assessment of that person must be deemed to have commenced on the day on which that person so ceases to be a resident.

(3)(a) Subject to subsections (4) and (5), this subsection applies where a company that is—

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(i) a resident ceases to be a resident or becomes a headquarter company during any year of assessment of that company; or

(ii) a controlled foreign company in relation to any resident ceases to be a controlled foreign company in relation to any resident during any foreign tax year of that controlled foreign company.

(b) On the date immediately before the day on which a company ceases to be a resident or becomes a headquarter company or ceases to be a controlled foreign company as contemplated in paragraph (a)—

- (i) that company must be deemed to have disposed, by way of a distribution *in specie*, of each of that company's assets to the person or persons holding shares in that company and that person or those persons must be deemed to have acquired each of those assets in accordance with the effective interest of that person or those persons in the shares of the company on that date, which disposal and acquisition must be deemed to have been made for an amount received or accrued equal to the market value of the asset on that date; and
- (ii) each person contemplated in subparagraph (i) must be deemed to have disposed of each share held by that person in the company in exchange for the assets deemed to have been disposed of as contemplated in that subparagraph.

(c) On the day on which a company ceases to be a resident or becomes a headquarter company or ceases to be a controlled foreign company as contemplated in paragraph (a)—

- (i) all of the assets that are deemed to have been acquired by the person or persons contemplated in paragraph (b)(i) as a result of the disposal contemplated in that paragraph must be deemed to be transferred to the company by that person or those persons; and
- (ii) any asset that is deemed to be transferred to the company as contemplated in subparagraph (i) must be deemed to be so transferred in exchange for the issue by the company of the shares that are deemed to have been disposed of as contemplated in paragraph (b)(ii).

(d) Where a company that is a resident ceases to be a resident or becomes a headquarter company during any year of assessment of that company as contemplated in paragraph (a)(i)—

- (i) that year of assessment must be deemed to have ended on the date immediately before the day on which that company so ceased to be a resident or became a headquarter company;
- (ii) the next succeeding year of assessment of that company must be deemed to have commenced on the day on which that company so ceased to be a resident or became a headquarter company; and
- (iii) that company must, on the date immediately before the day on which the company so ceased to be a resident or became a headquarter company and for the purposes of section

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64EA(b), be deemed to have declared and paid a dividend that consists solely of a distribution of an asset *in specie*, the amount of which must be deemed to be equal to the market value of all of the assets of that company on that date less—

(aa) the liabilities of the company as at that date;

(bb) the sum of the contributed tax capital of all the classes of shares of the company as at that date; and

(cc) any amount thereof that constitutes a dividend in terms of the definition of dividend in section 64D.

(e) Where a controlled foreign company ceases to be a controlled foreign company during any foreign tax year of that controlled foreign company as contemplated in paragraph (a)(ii)—

(i) that foreign tax year must be deemed to have ended on the date immediately before the day on which that controlled foreign company so ceased to be a controlled foreign company; and

(ii) the next succeeding foreign tax year of that controlled foreign company must be deemed to have commenced on the day on which that controlled foreign company so ceased to be a controlled foreign company.

(4) Subsections (2) and (3) do not apply in respect of an asset of a person where that asset constitutes—

(a) immovable property situated in the Republic that is held by that person;

(b) any interest or right of whatever nature of that person to or in immovable property situated in the Republic, including an interest in immovable property contemplated in paragraph 2(2) of the Eighth Schedule;

(c) any asset which will, after the person ceases to be a resident or a controlled foreign company or becomes a headquarter company as contemplated in subsection (2) or (3), be attributable to a permanent establishment of that person in the Republic;

(d) 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 or a controlled foreign company or becomes a headquarter company as contemplated in subsection (2) or (3);

(e) any equity instrument contemplated in section 8C that had not yet vested as contemplated in that section at the time that the person ceases to be a resident or a controlled foreign company or becomes a headquarter company as contemplated in subsection (2) or (3); or

(f) any right of that person to acquire any marketable security contemplated in section 8A.

(5) Subsection (3) does not apply where a controlled foreign company ceases to be a controlled foreign company as contemplated in paragraph (a)(ii) of that subsection as a result of

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a disposal contemplated in paragraph 64B of the Eighth Schedule if any capital gain or capital loss determined in respect of that disposal is disregarded in terms of that paragraph.”.

(2) Subsection (1) is deemed to have come into operation on 8 May 2012 and applies in respect of any person that—

- (a) ceases to be a resident;
 - (b) becomes a headquarter company; or
 - (c) ceases to be a controlled foreign company in relation to a resident,
- on or after that date.

Amendment of section 9I of Act 58 of 1962, as inserted by section 27 of Act 24 of 2011

21. (1) Section 9I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

- “(a) 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 company forming part of the same group of companies as that shareholder) held 10 per cent or more of the equity shares and voting rights in that company: Provided that in determining whether a company complies with the requirements prescribed by this paragraph in relation to any previous year of assessment of that company, no regard must be had to any such year of assessment if the company did not carry on any trade during such year of assessment;
- (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]** debt owed by; 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 10 per cent of the equity shares and voting rights: Provided that in determining—
 - (aa) the total assets of the company, there must not be taken into account any amount in cash or in the form of a bank deposit payable on demand; and
 - (bb) whether a company complies with the requirements prescribed by this paragraph in relation to any previous year of assessment of that company, no regard must

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be had to any such year of assessment if the company did not at any time during such year of assessment own assets with a total market value exceeding R50 000; and”.

(2) Subsection (1) comes into operation on 1 January 2013 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, section 18 of Act 7 of 2010 and section 28 of Act 24 of 2011

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

(a) by the substitution in subsection (1)(gC) for subparagraph (ii) of the following subparagraph:

“(ii) pension received by or accrued to any resident from a source outside the Republic [, **which is not deemed to be from a source within the Republic in terms of section 9(1)(g), in consideration of**] as consideration for past employment outside the Republic;”;

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

“(gH) any amount received or accrued in respect of a policy of insurance—

(i) where the policy relates to death, disablement or severe illness of an employee or director, or former employee or director, of the person that is the policyholder; and

(ii) no amount of premiums payable in respect of that policy on or after 1 March 2012 is deductible from the income of that person for the purposes

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of determining the taxable income derived by the person from carrying on any trade;”;

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

“(h) any amount of interest as defined in section [24J(1) or deemed interest as contemplated in section 8E(2),] 37I which is received or accrued during any year of assessment by or to any person who is not a resident, unless that [person—

(i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or

(ii) at any time during that year carried on business through a permanent establishment in the Republic] amount is attributable to an amount that is exempt from the withholding tax on interest in terms of section 37K;”;

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

“(hA) any amount received by or accrued to the holder of a debt [instrument as defined in section 23K(1)]—

(i) if the holder of that debt [instrument] is a company that forms part of the same group of companies, as defined in section 41, as the issuer of that debt [instrument]; and

(ii) to the extent that the amount is attributable to any amount of interest as defined in section 23K(1) that is not deductible as a result of the application of section 23K;”;

(e) by the substitution in subsection (1)(k)(i) for the words preceding the proviso of the following words:

“dividends (other than dividends paid or declared by a headquarter company) received by or accrued to [or in favour of] any person”;

(f) by the deletion in subsection (1)(k)(i) of paragraph (aa) of the proviso;

(g) by the substitution in the proviso to subsection (1)(k)(i) for the words preceding subparagraph (A) in paragraph (dd) of the following words:

“to any dividend in respect of a restricted equity instrument as defined in section 8C to the extent that the restricted equity instrument was acquired in the circumstances contemplated in section 8C, unless—”;

(h) by the substitution in subsection (1)(k)(i) for subitem (A) of item (dd) of the proviso of the following subitem:

“(A) the restricted equity instrument constitutes an equity share[, other than an equity share that would have constituted a hybrid equity instrument as defined in section

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8E(1) but for the three-year period requirement contemplated in that definition];”;

(i) by the substitution in the proviso to subsection (1)(k)(i) for paragraphs (ee), (ff) and (gg) of the following paragraphs:

“(ee) to any dividend received by or accrued to **[or in favour of]** a company in **[consequence of—**

(A) any cession; or

(B) any right of that company acquired in consequence of any cession]

respect of a share not held by the company at the time of the receipt or accrual, unless the dividend was received or accrued in respect of the disposal, by that company, of that share to the company that issued the share;

(ff) to any dividends received by or accrued to **[or in favour of]** a company in respect of a share held by that company to the extent that the aggregate of those dividends does not exceed an amount equal to the aggregate of any amounts incurred by that company **[by way of direct or indirect]** as compensation for any distributions in respect of any other share borrowed by the company less any amounts received or accrued as compensation for any distributions in respect of any other share: Provided that this subsection must not apply where [that] the share so borrowed [constitutes an identical asset] and the share so lent do not constitute identical assets 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 company in respect of a share borrowed by that company;”;

(j) by the deletion in subsection (1)(k)(ii) of paragraph (iii) of the proviso to item (dd);

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

“(l) **[any]** the amount of any royalty as defined in section 49A which is received [by] or accrued during any year of assessment by or to any person [which amount has been subject to withholding tax in terms of the provisions of section 35] who is not a resident, unless that amount is attributable to an amount that is exempt from the withholding tax on royalties in terms of section 49D;”;

(l) by the substitution in subsection (1)(o) for paragraph (B) of the proviso to subparagraph (ii) of the following paragraph:

“(B) the provisions of this paragraph shall not apply in respect of any remuneration—

(AA) derived in respect of the holding of [any] a public office contemplated in section 9(2)(g); or

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(BB) [from] received by or accrued to any person in respect of services rendered or work or labour performed [for or on behalf of any employer,] as contemplated in section 9[(1)(e)](2)(h); and”;

(m) by the deletion in subsection (1) of paragraph (y);

(n) by the deletion in subsection (1) of paragraph (zA); and

(o) by the deletion in subsection (1) of paragraph (zH);

(2) Paragraph (a) of subsection (1) is deemed to have come 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.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of receipts and accruals on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of—

(a) amounts received or accrued before that date; and

(b) amounts paid or that become payable on or after that date.

(5) Paragraph (d) of subsection (1) comes into operation on 1 January 2013.

(6) Paragraphs (e) and (g) of subsection (1) are deemed to have come into operation on 1 January 2011.

(7) Paragraph (f) of subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of years of assessment commencing on or after that date.

(8) Paragraph (h) of subsection (1) comes into operation on 1 January 2013.

(9) Paragraph (i) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.

(10) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 October 2011 and applies in respect of dividends received or accrued during years of assessment commencing on or after that date.

(11) Paragraph (k) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(12) Paragraph (l) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of remuneration derived or received or accrued during years of assessment commencing on or after that date.

(13) Paragraphs (m), (n) and (o) of subsection (1) are deemed to have 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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Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Bill 10 of 2012

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

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) if that person is a foreign company and the foreign dividend is paid or declared by another foreign company that is resident in the same country as that **[company]** person.”;
- (b) by the addition in subsection (2) of the following proviso to paragraph (c):
- “: Provided that for the purposes of this paragraph, the net income of any company contemplated in subparagraphs (i) and (ii) must be determined without regard to subsection (3)”;
- (c) by the addition to subsection (2) of the following proviso:
- “: Provided that paragraphs (a), (b) and (d) must not apply to any foreign dividend to the extent that the foreign dividend is deductible by the foreign company by which that foreign dividend is paid or payable in the determination of any tax on income on companies of the country in which that foreign company has its place of effective management”;
- (d) by the substitution in subsection (3)(b)(ii) for items (aa) and (bb) of the following items:
- “(aa) where the person is a natural person, deceased estate, insolvent estate or **[special]** trust, the ratio of the number 25 to the number 40; or
- (bb) where the person is a person other than a natural person, deceased estate, insolvent estate or **[special]** trust, the ratio of the number 13 to the number 28; and”;
- (e) by the substitution in subsection (4)(a)(i) for the words following item (bb) of the following words:
- “any amount paid or payable by any person to any other person; and”;
- (f) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:
- “(ii) the amount so paid or payable is deductible **[by]** from the income of the person by whom it is paid or payable and—
- (aa) is not subject to normal tax in the hands of **[that]** the other person contemplated in subparagraph (i); [or] and
- (bb) where that other person contemplated in subparagraph (i) 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,

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unless the amount so paid or payable is paid or payable in the ordinary course of business of the person by whom it is so paid or payable as consideration for the purchase of trading stock; or”.

(2) Subsection (1) is deemed to have come into operation—

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

Insertion of section 10C in Act 58 of 1962

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

“Exemption of non-deductible element of compulsory annuities

10C. (1) For the purposes of this section—

‘compulsory annuity’ means the amount of the remainder of the retirement interest of a person payable in the form of an annuity as contemplated in—

- (a) paragraph (ii)(dd) of the proviso to paragraph (c) of the definition of ‘pension fund’;
- (b) paragraph (e) of the proviso to the definition of ‘pension preservation fund’; or
- (c) paragraph (b)(ii) of the proviso to the definition of ‘retirement annuity fund’.

(2) There shall be exempt from normal tax in respect of the aggregate of compulsory annuities payable to a person an amount equal to so much of the person’s own contributions to any pension fund, pension preservation fund and retirement annuity fund that did not rank for a deduction against the person’s income in terms of section 11(k) or (n) as has not previously been—

(a) allowed to the person as a deduction in terms of the Second Schedule; or

(b) exempted from normal tax in terms of this section,

in determining the amount to be included in the person’s taxable income in respect of any year of assessment.”.

(2) Subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.

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Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 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, section 19 of Act 7 of 2010, section 30 of Act 24 of 2011 and item 33 of Schedule to Tax Administration Act of 2011

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

(a) by the substitution in paragraph (e) for paragraph (iiA) of the proviso of the following paragraph:

“(iiA) where any machinery, implement, utensil or article qualifying for an allowance under this paragraph is mounted on or affixed to any concrete or other foundation or supporting structure and **[the Commissioner is satisfied]**—

(aa) **[that]** the foundation or supporting structure is designed for such machinery, implement, utensil or article and constructed in such manner that it is or should be regarded as being integrated with the machinery, implement, utensil or article;

(bb) **[that]** the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, implement, utensil or article mounted thereon or affixed thereto,

the said foundation or supporting structure shall for the purposes of this paragraph not be deemed to be a structure or work of a permanent nature but shall for the purposes of this Act be deemed to be a part of the machinery, implement, utensil or article mounted thereon or affixed thereto;”;

(b) by the substitution for paragraphs (i) and (j) of the following paragraphs:

“(i) the amount of any **[debts]** debt due to the taxpayer which have during the year of assessment become bad, provided such amount is included in the current year of

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assessment or was included in previous years of assessment in the taxpayer's income;

(j) an allowance as may be made each year by the Commissioner in respect of so much of any **[debts]** debt due to the taxpayer as the Commissioner considers to be doubtful, if **[those debts]** that debt would have been allowed as a deduction under any other provisions of this Part had **[they]** it become bad: Provided that such allowance shall be included in the income of the taxpayer in the following year of assessment”;

(c) by the substitution in paragraph (n) for paragraph (cc) of the proviso to subparagraph (i) of the following paragraph:

“(cc) any current contributions (excluding any amount referred to in item (aa) of this proviso) to any retirement annuity fund or funds which are made by the taxpayer as a member of such fund or funds during a year of assessment and do not qualify for deduction from his or her income for that year under subparagraph (i)(aa) shall be carried forward and, except to the extent that such contributions have been exempted under section 10C or accounted for under paragraph 5(1) or 6(1)(b) or (3) of the Second Schedule, be deemed for the purposes of subparagraph (i)(aa) to be current contributions made to the fund or funds in question during the next succeeding year of assessment”;

(d) by the deletion of paragraph (s);

(e) by the substitution in paragraph (w) for the words preceding subparagraph (i) of the following words:

“expenditure incurred by **[a taxpayer]** such person in respect of any premiums payable under a policy of insurance **[(other than a policy of insurance solely against an accident as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993))]** of which the **[taxpayer]** person is the policyholder, where—”;

(f) by the substitution in paragraph (w)(i) for item (aa) of the following item:

“(aa) the policy relates to the death, disablement or severe illness of an employee or director of the **[taxpayer]** person, unless the death, disablement or severe illness arises solely from and in the course of employment of the employee or director; and”;

(g) by the substitution in paragraph (w)(ii) for item (aa) of the following item:

“(aa) the taxpayer is insured against any loss by reason of the death, disablement or severe illness of an employee or director of the **[taxpayer]** person, unless the

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death, disablement or severe illness arises solely from and in the course of employment of the employee or director; and”;

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013 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 2013.

(4) Paragraph (c) of subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.

(5) Paragraph (d) of subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of years of assessment commencing on or after that date.

(6) Paragraphs (e), (f) and (g) are deemed to have come into operation on 1 March 2012 and apply in respect of premiums paid or incurred on or after that date.

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by section 13 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008, section 16 of Act 17 of 2009, section 20 of Act 7 of 2010, section 32 of Act 24 of 2011, section 1 of Act 25 of 2011 and paragraph 34 of Schedule to Tax Administration Act of 2011

26. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (19) of the following subsection:

“(19) [For the purposes of subsection (1), the] The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).”.

(2) Subsection (1) comes into operation on 1 October 2012 and applies in respect of expenditure incurred in respect of research and development on or after 1 October 2012 but before 1 October 2022.

Amendment of section 12B of Act 58 of 1962, as substituted by section 19 of Act 31 of 2005 and amended by section 21 of Act 35 of 2007 and by section 18 of Act 17 of 2009

27. (1) Section 12B of the Income Tax Act, 1962, is hereby amended:

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

“(h) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of an ‘instalment credit agreement’ as defined in section 1 of the Value-Added

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Tax Act, 1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by that taxpayer for the purpose of his or her trade to be used by that taxpayer in the generation of **[electricity]** energy from—

- (i) wind power;
- (ii) **[sunlight]** solar energy;
- (iii) **[gravitational water forces]** hydropower to produce electricity **[of not more than 30 megawatts]**; and
- (iv) biomass comprising organic wastes, landfill gas or **[plants]** plant material”;

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

“(i) improvements (other than repairs) to—

(a) any machinery, plant, implement, utensil or article referred to in paragraph (f), (g) or (h); and

(b) any foundations or supporting structures that are, in terms of the proviso to this subsection, deemed to be part of the machinery, plant, implement, utensil or article referred to in paragraph (h),

which is during the year of assessment used as contemplated in that paragraph”;

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

“: Provided that where any machinery, plant, implement, utensil, article or improvement for which a deduction is allowed under paragraph (h) is mounted on or affixed to any concrete or other foundation or supporting structure and—

(a) 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) 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; and

(c) the foundation or supporting structure was brought into use on or after 1 January 2013,

the foundation or supporting structure shall be deemed to be a part of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

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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, section 19 of Act 17 of 2009 and section 33 of Act 24 of 2011

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

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

“a deduction equal to 20 per cent of the cost to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship, aircraft or improvement (hereinafter referred to as the asset) shall [**subject to the provisions of subsection (4),**] be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment”; and

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

“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 that**]—”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of expenditure incurred in respect of research and development on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing 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 24 of Act 9 of 2006, section 14 of Act 20 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, section 23 of Act 7 of 2010 and section 34 of Act 24 of 2011

29. Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(a)(ii) for item (ii) of the following item:

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“(ii) any company, co-operative or close corporation if the company, co-operative or close corporation has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided that this item ceases to apply if the company, co-operative or close corporation has at any stage withdrawn any step so taken or does anything to invalidate any step so taken, with the result that the company, co-operative or close corporation will not be liquidated, wound up or deregistered;”.

Repeal of section 12G of Act 58 of 1962

30. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 12G.

(2) Subsection (1) comes into operation with effect from years of assessment commencing on or after 1 January 2013.

Amendment of section 12H of Act 40 of 1949, as substituted by section 23 of Act 17 of 2009 and amended by section 25 of Act 7 of 2010 and section 36 of Act 24 of 2011

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

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

“ **‘associated institution’**, in relation to any single employer, means—

- (a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons;
- (b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or
- (c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer;”;

(b) by the substitution in subsection (1) for the definition of “registered learnership agreement” of the following definition—

“ **‘registered learnership agreement’** means a learnership agreement that is—

- (a) registered in accordance with the Skills Development Act, 1998; and
- (b) entered into between a learner and an employer before 1 October 2016;”;

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

“(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) or to a learnership agreement that is deemed to be a registered learnership agreement as contemplated in paragraph (c) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R30 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.” ;

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

“(c) If a learnership agreement has been registered in accordance with the Skills Development Act, 1998, within a period of six months after the last day of the employer’s year of assessment, the learnership agreement shall be deemed to have been registered in accordance with the Skills Development Act, 1998, on the date on which the learnership agreement has been entered into between a learner and an employer.”; and

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

“(6) This section does not apply in respect of any registered learnership agreement where the learner that is the party to that agreement previously failed to complete any other registered learnership agreement **[and]**—

(a) to which the employer or an associated institution in relation to that employer was a party; and

(b) the registered learnership agreement contains the same education and training component as that other registered learnership agreement.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of learnership agreements entered into on or after that date.

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, section 26 of Act 7 of 2010 and section 37 of Act 24 of 2011

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

(a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:

“(a) R900 million in the case of any greenfield project with preferred status, or R550 million in the case of any other greenfield project from the date of approval;

(b) R550 million in the case of any brownfield project with preferred status, or R350 million in the case of any other brownfield project from the date of approval.”;

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- (b) by the deletion in subsection (7) of paragraph (b); and
- (c) by the substitution for subsection (11) of the following subsection:

“(11) 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 company carrying on an industrial policy project must report to the adjudication committee with respect to the progress of the industrial policy project in terms of the requirements of subsections (7) and (8) within such time, in such form and in such manner as the Minister of Finance may prescribe.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of industrial policy projects approved on or after that date.

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 and section 38 of Act 24 of 2011

33. (1) Section 12J of the Income Tax Act, 1962, is hereby amended 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—**

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

(2) Subsection (1) comes into operation on 1 January 2013.

Amendment of section 12L of Act 58 of 1962, as inserted by section 27 of Act 17 of 2009 and amended by section 27 of Act 7 of 2010

34. (1) Section 12L of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The amount of the allowance contemplated in subsection (2) must be **[determined in accordance with the formula—**

$$A = \frac{B \times C}{D}$$

in which formula—

- (a) **‘A’ represents the amount to be determined;**
- (b) **‘B’ represents the energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment of the taxpayer as**

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contemplated in paragraph (c) of the definition of energy efficiency savings certificate in subsection (1);

- (c) ‘C’ represents the applied rate as the lowest feed-in-tariff expressed in rands per kilowatt hour in effect at the beginning of the year of assessment as determined in terms of the Regulatory Guidelines of the National Energy Regulator of South Africa issued in terms of sections 4(a)(ii) and 47(1) of the National Energy Regulator Act, 2004 (Act No. 40 of 2004); and
- (d) ‘D’ represents the number two, unless a different number has been announced by the Minister in the *Gazette* in which case ‘D’ represents that number] calculated at 45 cent per kilowatt hours or kilowatt hours equivalent of energy efficiency savings.”.

(2) Subsection (1) comes into operation on the date on which section 27(1) of the Taxation Laws Amendment Act, 2009 (Act No. 17 of 2009), comes into operation.

Amendment of section 12M of Act 58 of 1962, as inserted by section 28 of Act 17 of 2009 and amended by section 28 of Act 7 of 2010

35. (1) Section 12M of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words following paragraph (b) and preceding the proviso of the following words:

“but only to the extent that the amount is paid for the purposes of making any contribution, in respect of any former employee or dependant contemplated in paragraph (a), to any medical scheme or fund contemplated in section [18(1)(a)(i) or (ii)] 6A(2)(a)(i) or (ii)”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of contributions made on or after that date.

Amendment of section 12O of Act 58 of 1962 as inserted by section 39 of Act 24 of 2011

36. (1) Section 12O of the Income Tax Act, 1962 is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) [A] Any—

(i) special purpose corporate vehicle; or

(ii) collection account manager that—

[(i)](aa) [that] manages exploitation rights under a collection account management agreement; and

[(ii)](bb) [that] is approved by the Minister for the purpose of this section by notice in the *Gazette*,

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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 exploitation rights of a film is distributed to a person within a period of 10 years commencing from the completion date of the film.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of receipts and accruals in respect of films of which principal photography commences on or after that date but before 1 January 2022.

Insertion of section 12P in Act 58 of 1962

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

“Amounts received or accrued in respect of government grants

12P. (1) For the purposes of this section—

‘government grant’ means a grant-in-aid, subsidy or contribution (in cash or kind) by the government of the Republic in the national or provincial sphere;

‘allowance asset’ means an allowance asset as defined in section 41(1)(a);

‘base cost’ means base cost as defined in paragraph 1 of the Eighth Schedule;

‘capital asset’ means an asset as defined in paragraph 1 of the Eight Schedule that is not an allowance asset or trading stock.

(2) There must not be taken into account in determining the taxable income of any person any amount received by or accrued to or in favour of that person by way of a government grant, if that grant—

(a) is listed in the Eleventh Schedule; or

(b) is identified by the Minister by notice in the *Gazette* for the purpose of the exemption, with effect from a date specified by the Minister in that notice (including any date that precedes the date of such notice), after having regard to—

(i) the implications of the exemption for the National Revenue Fund; and

(ii) whether the tax implications were taken into account in deciding to allocate that grant.

(3) Where during any year of assessment any amount is received by a person by way of a government grant that is not taken into account in terms of subsection (2) in determining the taxable income of that person to the extent that the amount is received—

(a) for the purpose of the acquisition of trading stock; or

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(b) as a reimbursement for expenditure incurred in respect of the acquisition of trading stock if the trading stock is held when that person receives the grant, any expenditure incurred in respect of that trading stock allowed as a deduction in terms of section 11(a), or any amount taken into account in respect of the value of trading stock as contemplated in section 22(1) or (2), in respect of that year of assessment must be reduced to the extent of the amount of that government grant: Provided that the expenditure or amount may only be reduced to the extent of the expenditure or amount.

(4) Where during any year of assessment any amount is received by a person by way of a government grant that is not taken into account in terms of subsection (2) in determining the taxable income of that person to the extent that the amount is received—

(a) for the purpose of the acquisition of an allowance asset; or

(b) as a reimbursement for expenditure incurred in respect of the acquisition of an allowance asset, if the allowance asset is held when that person receives the grant, the base cost of that allowance asset must be reduced to the extent of the amount of the government grant: Provided that if the amount of the government grant exceeds the amount in respect of the acquisition of the allowance asset, the base cost of that allowance asset must be deemed to be nil.

(5) Where during any year of assessment any amount is received by a person by way of a government grant that is not taken into account in terms of subsection (2) in determining the taxable income of that person and to the extent that the amount is received—

(a) for the purpose of the acquisition of an allowance asset, the sum of any deductions by way of an allowance may not exceed an amount equal to the acquisition cost of that allowance asset reduced by the amount of the government grant; or

(b) as a reimbursement for expenditure incurred in respect of the acquisition of an allowance asset may not exceed an amount equal to the acquisition cost of that allowance asset reduced by an amount equal to the sum of the amount of the government grant and any amounts in respect of deductions allowed by way of an allowance prior to the person receiving that government grant.

(6) Where during any year of assessment any amount is received by a person by way of a government grant that is not taken into account in terms of subsection (2) in determining the taxable income of that person to the extent that the amount is received—

(a) for the purpose of the acquisition of a capital asset; or

(b) as a reimbursement for expenditure incurred in respect of the acquisition of a capital asset, if the capital asset is held when that person receives the grant,

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the base cost of that capital asset must be reduced to the extent of the amount of the government grant: Provided that if the amount of the government grant exceeds the amount in respect of the acquisition of the capital asset, the base cost of that capital asset must be deemed to be nil.

(7)(a) Where during any year of assessment any amount is received by a person by way of a government grant that is not taken into account in terms of subsection (2) in determining the taxable income of that person to the extent that the amount—

(i) is not taken into account in respect of the reduction in respect of any expenditure incurred in respect of trading stock, or in respect of a reduction of any amount taken into account in respect of the value of trading stock as contemplated in subsection (3);

(ii) is not taken into account in respect of the reduction of the base cost of an allowance asset as contemplated in subsection (4); or

(iii) is not received for the purpose of the acquisition of a capital asset or as a reimbursement for expenditure incurred in respect of the acquisition of a capital asset as contemplated in subsection (6),

that person must reduce any amount allowed to be deducted from income in terms of section 11 for that year of assessment in respect of any expenditure incurred in an amount equal to the amount of that government grant to the extent that the amount is not taken into account as contemplated in subparagraph (i) or (ii) or received as contemplated in subparagraph (iii).

(b) To the extent that the amount that is received by way of a government grant exceeds the deduction as contemplated in paragraph (a), that excess is deemed to be an amount received or accrued in respect of that government grant during the following year of assessment for the purpose of paragraph (a).

(8) Where a government grant is applied on behalf of, or for the benefit of, a person in respect of—

(a) the acquisition of trading stock as contemplated in subsection (3);

(b) the acquisition of an allowance asset as contemplated in subsection (4);

(c) the acquisition of a capital asset as contemplated in subsection (6); or

(d) expenditure that is allowed as a deduction from income in terms of section 11 other than expenditure incurred in respect of the acquisition of trading stock as contemplated in paragraph (a), an allowance asset as contemplated in paragraph (b) or a capital asset as contemplated in paragraph (c).

that person is deemed to have applied that amount for the purposes of the acquisition of that trading stock, allowance asset or capital asset and that person is deemed to have incurred the expenditure in respect of that acquisition.”.

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(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of years of assessment commencing 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, section 33 of Act 7 of 2010 and section 41 of Act 24 of 2011

38. (1) Section 13quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (c) of the following paragraph:

“(c) which is brought into use by the taxpayer after 31 March [2014] 2020.”

(2) Subsection (1) comes into operation on 30 March 2014 and applies in respect of any building, part thereof or improvement thereto that is brought into use on or after that date.

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, section 36 of Act 7 of 2010 and section 43 of Act 24 of 2011

39. (1) Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(c) for the words following subparagraph (ii) of the following words:

“as in the aggregate exceeds 7,5 per cent of the taxpayer’s taxable income (excluding any retirement fund lump sum benefit [and] retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under this [subparagraph] paragraph.”

(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.

Repeal of section 18 of Act 58 of 1962

40. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 18.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 19 in Act 58 of 1962

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41. (1) The Income Tax Act, 1962, is hereby amended by the insertion of the following section after section 18A:

“Reduction or cancellation of debt

19. (1) For the purposes of this section, ‘reduction amount’, in relation to a debt owed by a person, means any amount by which that debt is reduced less any amount applied by that person as consideration for that reduction.

(2) Subject to subsection (6), this section applies where a debt that is owed by a person is reduced by any amount and—

(a) the amount of that debt was used, directly or indirectly, to fund any expenditure in respect of which a deduction or allowance was granted in terms of this Act; and

(b) the amount of that reduction exceeds any amount applied by that person as consideration for the reduction.

(3) Where—

(a) a debt owed by a person is reduced as contemplated in subsection (2); and

(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in the acquisition of trading stock that is held by that person at the time of the reduction of the debt,

the reduction amount in respect of that debt must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that trading stock, be applied to reduce any cost or expenditure incurred by that person in respect of that trading stock as contemplated in section 11(a) or 22(1) or (2): Provided that this subsection may only be applied to reduce any cost or expenditure incurred by a person in respect of trading stock to the extent of that cost or expenditure.

(4) Where—

(a) a debt owed by a person is reduced as contemplated in subsection (2); and

(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund—

(i) expenditure incurred in the acquisition of trading stock that is held by that person at the time of the reduction of the debt, and subsection (3) has been applied to reduce any cost or expenditure contemplated in that subsection to the full extent of that cost or expenditure; or

(ii) expenditure other than expenditure incurred in the acquisition of trading stock that is held by that person at the time of the reduction of the debt,

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the reduction amount in respect of that debt, less any amount of that reduction amount that has been applied to reduce any cost or expenditure of that person as contemplated in subsection (3), must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be applied to reduce any balance of assessed loss (contemplated in section 20(1)(a)) of that person: Provided that this subsection may only be applied to reduce any balance of assessed loss of a person to the extent of that balance.

(5) Where—

- (a) a debt owed by a person is reduced as contemplated in subsection (2);
- (b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund any expenditure;
- (c) subsection (3) has been applied to reduce any cost or expenditure contemplated in that subsection to the full extent of that cost or expenditure; and
- (d) subsection (4) has been applied to reduce any balance of assessed loss contemplated in that subsection to the full extent of that balance,

the reduction amount in respect of that debt, less any amount of that reduction amount that has been applied to reduce—

- (i) any cost or expenditure of that person as contemplated in subsection (3); and
- (ii) any balance of assessed loss as contemplated in subsection (4),

must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced for the purposes of section 8(4)(a).

(6) This section must not apply to any debt owed by a person—

- (a) that is an heir or legatee of a deceased estate, to the extent that the debt is owed to that deceased estate and is reduced by the deceased estate;
- (b) to the extent that the debt is reduced by way of a gratuitous waiver or renunciation of any right by the person to whom the debt is owed; or
- (c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 101 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of

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1997, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007, section 15 of Act 3 of 2008, section 35 of Act 60 of 2008 and section 32 of Act 17 of 2009

42. (1) Section 20 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of the proviso to paragraph (a).

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 20C of Act 58 of 1962, as inserted by section 38 of Act 7 of 2011

43. (1) Section 20C of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Where a headquarter company has during any year of assessment incurred any interest in respect of any financial assistance granted to that headquarter company by a person that is not a resident, the amount of the interest in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of the amount of interest received by or accrued to the headquarter company as relates to any portion 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 **[20]** 10 per cent of the equity shares and voting rights.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of years of assessment commencing on or after that date.

Substitution of section 20C of Act 58 of 1962

44. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 20C of the following section:

“Ring-fencing of interest and royalties incurred by headquarter companies

20C. (1) For the purposes of this section[,]=

‘**financial assistance**’ means financial assistance contemplated in section 31(1);

‘**royalty**’ means any amount that is, before taking into account section 49D(b), subject to the withholding tax on royalties in terms Part IVA.

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(2) Where a headquarter company has during any year of assessment incurred any interest in respect of any financial assistance granted to that headquarter company by a person that is not a resident, the amount of the interest in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of the amount of interest received by or accrued to the headquarter company as relates to any portion 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.

(2A) Where a headquarter company has during any year of assessment incurred any amount that constitutes a royalty payable to a person that is not a resident, the amount of the royalty in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of any amounts received by or accrued to the headquarter company in respect of—

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

(b) 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,

from 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.

(3) Any amount that is disallowed as a deduction in any year of assessment of a headquarter company in terms of subsection (2) or (2A) must **[be]**—

[(i)](a) be carried forward to the immediately succeeding year of assessment of the headquarter company; and

[(ii)](b) where that amount is disallowed as a deduction—

(i) in terms of subsection (2), be deemed to be an amount of interest actually incurred by the headquarter company during that succeeding year in respect of financial assistance granted to that headquarter company by a person that is not a resident; or

(ii) in terms of subsection (2A), be deemed to be an amount actually incurred by the headquarter company during that succeeding year that constitutes a royalty payable to a person that is not a resident.”

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(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into 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, section 39 of Act 7 of 2010 and section 45 of Act 24 of 2011

45. Section 22 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (8) for paragraph (B) of the following paragraph:

“(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) (otherwise than in the manner contemplated in [item] paragraph (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock; or”.

Amendment of section 22B of Act 58 of 1962, as substituted by section 46 of Act 24 of 2011

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

(a) by the substitution for subsections (2) and (3) of the following subsections:

“(2) Where a taxpayer that is a company disposes of shares in any other company, the amount of any exempt 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 exempt 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

(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 that 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

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(ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.

(3) For the purposes of subsection (2), 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.”; and

(b) by the substitution in subsection (2)(a)(iii) for the words preceding item (aa) of the following words:

“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—”; and

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

“(3) For the purposes of subsection (2)(a), 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 subparagraph (iii) of that subsection.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2013.

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 and Section 47 of Act 24 of 2011

47. (1) Section 23 of the Income Tax Act, 1962, is hereby amended—

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

“(c) subject to section 28, any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, security or indemnity;”; and

(b) by the substitution in paragraph (n) for subparagraph (i) of the following subparagraph:

“(i) is granted or paid to the taxpayer and is exempt from tax in terms of section **[10(1)(y) or (yA)] 10(1)(yA)**; and”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013 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 1 January 2012 and applies in respect of years of assessment commencing on or after that date.

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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, section 42 of Act 7 of 2010 and section 48 of Act 24 of 2011

48. (1) Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) No deduction shall be allowed under section 11(a) in respect of any expenditure incurred by a [taxpayer] person in respect of any premium paid under a policy of insurance [contemplated in section 11(w)], where the policy relates to death, disablement or severe illness of an employee or director, or former employee or director, of the person that is the policyholder, unless the death, disablement or severe illness arises solely from and in the course of employment of the employee or director.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of premiums paid or incurred on or after that date.

Amendment of section 23D of Act 58 of 1962, as inserted by section 19 of Act 113 of 1993 and amended by section 10 of Act 140 of 1993, section 20 of Act 21 of 1995, section 29 of Act 31 of 2005, section 21 of Act 8 of 2007, section 34 of Act 35 of 2007 and section 18 of Act 3 of 2008

49. (1) Section 23D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2A) for paragraph (c) of the following paragraph:

“(c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the lessee, licensee, [sublessor] sublessee, sublicensee, or connected person that arises as a result of the disposal.”.

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

Repeal of section 23E of Act 58 of 1962

50. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 23E.

(2) Subsection (1) comes into operation on 1 March 2013.

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000, section 34 of Act 60 of 2001, section 36 of Act 35 of 2007, section 19 of Act 3 of 2008 and section 43 of Act 7 of 2010

51. (1) Section 23H of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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“(a) which is allowable as a deduction in terms of the provisions of section 11(a), (c), (d) or (w), section 11A[,] or section 11D(1) [, **or section 28(2)(a)**]; and”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 23I of Act 58 of 1962, as substituted by section 38 of Act 60 of 2008 and amended by section 36 of Act 17 of 2009 and section 44 of Act 7 of 2010

52. (1) Section 23I of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “tainted intellectual property” of the following paragraph:

“(a) which was the property of the end user or of a taxable person that is or was a connected person, as defined in section 31[(1A)](4), in relation to the end user;”;

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (d) of the definition of “tainted intellectual property” of the following words:

“which was discovered, devised, developed, created or produced by the end user of that property, or by a taxable person that is a connected person, as defined in section 31[(1A)](4), in relation to the end user, if that end user, together with any taxable person that is a connected person in relation to that end user, holds at least 20 per cent of the participation rights, as defined in section 9D, in a person by or to whom an amount is received or accrues—”; and

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

“(3) Notwithstanding any provision of subsection (2) to the contrary, an amount equal to—

(a) one third of any expenditure contemplated in subsection (2) **[shall] must** be allowed to be deducted if withholding tax on royalties contemplated in **[section 35] Part IVA** is payable in respect of that amount at a rate of **[at least] 10 per cent; or**

(b) one half of any expenditure contemplated in subsection (2) must be allowed to be deducted if withholding tax on royalties contemplated in Part IVA is payable in respect of that amount at a rate of 15 per cent.”.

(2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 1 April 2012 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of amounts received or accrued to the extent that those amounts constitute amounts that are paid or that become payable on or after that date.

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Repeal of section 23J of Act 58 of 1962

53. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 23J.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of depreciable assets acquired by a taxpayer on or after that date.

Amendment of section 23K of Act 58 of 1962, as inserted by section 49 of Act 24 of 2001 and amended by section 50 of Act 24 of 2011

54. (1) Section 23K of the Income Tax Act, 1962, is hereby amended—

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

“**Limitation of deductions in respect of reorganisation and acquisition transactions**”;

(b) by the deletion in subsection (1) of the word “or” at the end of paragraph (a) of the definition of ‘acquiring company’;

(c) by the addition in subsection (1) of the word “or” at the end of paragraph (b) of the definition of ‘acquiring company’;

(d) by the insertion in subsection (1) after paragraph (b) of the definition of ‘acquiring company’ of the following paragraph:

“(c) a company that acquires an equity share in another company in terms of an acquisition transaction;”;

(e) by the insertion of the following definition after the definition of ‘acquiring company’:

“**‘acquisition transaction’** means an acquisition transaction as defined in section 24O(1) to which section 24O applies;”;

(f) by the deletion in subsection (1) of the definition of “debt instrument”;

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

“(2) Subject to subsections (3) and (9), no deduction is allowed in respect of any amount of interest incurred by an acquiring company in terms of—

(a) a debt **[instrument]** if that debt **[instrument]** was issued or used directly or indirectly—

[(a)](i) for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction; or

[(b)](ii) in substitution for any debt **[instrument]** issued or used as contemplated in **[paragraph (a)] subparagraph (i);** or

(b) an instrument as defined in section 24J(1) that constitutes a debt if that debt was issued or used—

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(i) for the purpose of financing the acquisition of an equity share in a company in terms of an acquisition transaction; or

(ii) in substitution for any other debt issued or used as contemplated in subparagraph (i).”;

(h) by the substitution in subsection (4)(a) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) the amount of interest incurred as contemplated in subsection (2) by an acquiring company in terms of a debt **[instrument]** contemplated in that subsection; and

(ii) all amounts of interest incurred, received or accrued in respect of all **[debt instruments] debts** issued or used directly or indirectly to fund a debt **[instrument]** in respect of which any amount of interest is incurred by an acquiring company as contemplated in subsection (2); and”;

(i) by the substitution in subsection (4)(b) for the words following subparagraph (ii) and preceding the proviso of the following words:

“any debt **[instrument]** contemplated in subparagraphs (i) and (ii) of paragraph (a)”;

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

“(6) A directive issued by the Commissioner in terms of subsection (3) in respect of an amount of interest incurred in terms of a debt instrument must be effective from—

(a) the date on which that debt instrument was issued or assumed if the application for that directive is made—

(i) on or before 31 December 2011, where that debt instrument was issued or assumed before 25 October 2011; or

(ii) within 60 days of the date of issue of that debt instrument, where that debt instrument is issued or assumed on or after 25 October 2011; or

(b) the date on which the application for that directive is made if—

(i) that debt instrument was issued or assumed before 25 October 2011 and that application is made after 31 December 2011; or

(ii) that debt instrument is issued or assumed on or after 25 October 2011 and that application is made later than 60 days after the date of issue or assumption of that debt instrument.”;

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

“(6) A directive issued by the Commissioner in terms of subsection (3) in respect of an amount of interest incurred in terms of a debt **[instrument]** must be effective from—

(a) the date on which that debt **[instrument]** was issued or assumed if the application for that directive is made—

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- (i) on or before 31 December 2011, where that debt **[instrument]** was issued or assumed before 25 October 2011; or
 - (ii) within 60 days of the date of issue of that debt **[instrument]**, where that debt **[instrument]** is issued or assumed on or after 25 October 2011; or
- (b) the date on which the application for that directive is made if—
- (i) that debt **[instrument]** was issued or assumed before 25 October 2011 and that application is made after 31 December 2011; or
 - (ii) that debt **[instrument]** is issued or assumed on or after 25 October 2011 and that application is made later than 60 days after the date of issue or assumption of that debt **[instrument]**.”;
- (l) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
- “The Minister must make regulations that prescribe criteria that the Commissioner must, in terms of subsection (4)(b), have regard to in considering any application made in terms of subsection (3) by an acquiring company in respect of any amount of interest incurred by such an acquiring company in terms of any debt **[instrument]**, which criteria must relate to—”;
- (m) by the substitution in subsection (7) for paragraph (a) of the following paragraph:
- “(a) all amounts of debt in relation to total equity of such an acquiring company;”;
- (n) by the substitution in subsection (7) for paragraphs (c) and (d) of the following paragraphs:
- “(c) terms of such a debt **[instrument]**, including the economic effect of such a debt **[instrument]**, having regard to any debt or equity features of such a debt **[instrument]**;
 - (d) the direct or indirect holding of shares in such an acquiring company by any holder (or any company that forms part of the same group of companies as the holder) of such a debt **[instrument]**; and”.

(2) Paragraphs (a), (b), (c), (d), (e) and (g) of subsection (1) come into operation on 1 January 2013 and apply in respect of acquisition transactions entered into on or after that date.

(3) Paragraphs (f), (h), (i), (k), (l), (m) and (n) of subsection (1) come into operation on 1 January 2013.

(4) Paragraph (j) of subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into on or after that date.

Insertion of section 23L of Act 58 of 1962

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

“Suspension of deductions in respect of intellectual property and debt

23L. (1) For the purposes of this section—

‘interest expenditure’ means any amount actually incurred by any person in respect of any debt;

‘royalty expenditure’ means any amount actually incurred by any person in respect of—

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

(b) 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.

(2) A deduction is not allowed during any year of assessment in respect of any amount of interest expenditure or royalty expenditure actually incurred during that year to the extent that that amount—

(a) does not (during that year of assessment or during any previous year of assessment) constitute—

(i) income received by or accrued to any other person; or

(ii) a proportional amount of net income of a controlled foreign company an amount equal to which is included in the income of a resident in terms of section 9D; and

(b) is not paid and has not become payable during that year of assessment.

(3) Where, during any year of assessment, a taxpayer has actually incurred any amount of interest expenditure or royalty expenditure and that amount is, in terms of subsection (2), not allowed as a deduction during that year, that amount may be—

(a) carried forward to the next succeeding year of assessment of the taxpayer; and

(b) deemed to be an amount of interest expenditure or royalty expenditure actually incurred during that next succeeding year.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of expenditure incurred during years of assessment commencing on or after that date.

Amendment of section 24B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1978 and amended by section 13 of Act 104 of 1979, section 20 of Act 113 of 1993, section 32 of Act 30 of

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2000, section 22 of Act 32 of 2004, section 39 of Act 35 of 2007, section 39 of act 60 of 2008 and section 37 of Act 17 of 2009

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

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

“Transactions where [assets] shares are acquired by way of issue in exchange for shares issued”;

(b) by the deletion of subsection (1); and

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

“(2) **[If]** Notwithstanding section 40CA, if a company acquires any share which is issued to that company directly or indirectly in exchange for the issue of shares by that company or any connected person in relation to that company, that company is deemed not to have incurred any expenditure in respect of the acquisition of that share so acquired.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisitions made on or after that date.

Insertion of section 24BA in Act 58 of 1962

57. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24B of the following section:

“Transactions where assets are acquired as consideration for shares issued

24BA. (1) Notwithstanding section 40CA and subject to section 24B, if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person as consideration for the issue of shares by that company and the market value of—

(a) that asset immediately after that acquisition exceeds the market value of the shares

immediately after that issue, the amount of the excess must—

(i) be deemed to be a capital gain in respect of the disposal by that company of the shares; and

(ii) where those shares are acquired by that person as—

(aa) a capital asset, be applied to reduce any amount of expenditure incurred by that person in acquiring those shares that is allowable in terms of paragraph 20 of the Eighth Schedule; or

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- (bb) trading stock, be applied to reduce any amount that must be taken into account by the person in respect of the shares in terms of section 11(a) or 22(1) or (2); or
- (b) the shares immediately after that issue exceeds the market value of that asset immediately after the acquisition, the amount of the excess must—
- (i) for the purposes of Part VIII of Chapter II, be deemed to be a dividend as defined in section 64D that—
- (aa) consists of a distribution of an asset *in specie*; and
- (bb) is paid by the company on the date of that issue; and
- (ii) where those shares are acquired by that person as—
- (aa) a capital asset, be deemed to be an amount of expenditure incurred by that person in acquiring the shares that is allowable in terms of paragraph 20 of the Eighth Schedule; or
- (bb) trading stock, be deemed to be an amount that must be taken into account by the person in respect of those shares in terms of section 11(a) or 22(1) or (2).”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Insertion of section 24BB in Act 58 of 1962

58. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24BA of the following section:

“Transactions where assets are acquired as consideration for debt issued

24BB. (1) Notwithstanding section 40CA, if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person as consideration for the issue of any debt by that company and—

- (a) the market value of that asset immediately after that acquisition exceeds the amount owing by that company in terms of that debt immediately after that issue, the amount of the excess must —
- (i) be deemed to be a an amount received by or accrued to or in favour of that person that is not of a capital nature; and
- (ii) where that debt is acquired by that person as—

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- (aa) a capital asset, be applied to reduce any amount of expenditure incurred by that person in acquiring that debt that is allowable in terms of paragraph 20 of the Eighth Schedule; or
 - (bb) trading stock, be applied to reduce any amount that must be taken into account by the person in respect of the debt in terms of section 11(a) or 22(1) or (2); or
- (b) the amount owing by that company in terms of that debt immediately after that issue exceeds the market value of that asset immediately after the acquisition, the amount of the excess must—
 - (i) be deemed to be an amount of expenditure incurred by that company that is not of a capital nature; and
 - (ii) where that debt is acquired by that person as—
 - (aa) a capital asset, be deemed to be an amount of expenditure incurred by that person in acquiring the debt that is allowable in terms of paragraph 20 of the Eighth Schedule; or
 - (bb) trading stock, be deemed to be an amount that must be taken into account by the person in respect of that debt in terms of section 11(a) or 22(1) or (2).

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

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, section 47 of Act 7 of 2010 and section 52 of Act 24 of 2011

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

- (a)** by the substitution in subsection (1) for the definition of “affected contract” of the following definition:

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

- (a)** [**such loan or advance has not yet been obtained or granted, as the case may be, by such person, or**] such debt has not yet been incurred by, or the amount payable in

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respect of such debt has not yet accrued to, such person [, **as the case may be,**] during such year of assessment; and

(b) such **[loan, advance or]** debt—

(i) is to be utilised by such person to acquire any asset or to finance any expense; or

(ii) will arise from the sale of any asset or the supply of any services,

in the ordinary course of **[his]** the person's trade in terms of an agreement entered into by such person prior to the end of such year of assessment;”;

(b) by the substitution in subsection (1) for paragraph (b) of the definition of “exchange item” of the following paragraph:

“(b) owing by or to that person in respect of a **[loan or advance or a]** debt incurred by or payable to such person;”;

(c) by the substitution in subsection (1) for paragraph (a) of the definition of “realised” of the following paragraph:

“(a) a **[loan or advance or]** debt in any foreign currency, when and to the extent to which payment is received or made in respect of such **[loan, advance or]** debt, or when and to the extent to which such **[loan, advance or]** debt is settled or disposed of in any other manner;”;

(d) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (a) of the definition of “ruling exchange rate” of the following words:

“a **[loan or advance or]** debt in a foreign currency on—”;

(e) by the substitution in subsection (1) for the proviso to paragraph (a) of the definition of “ruling exchange rate” of the following proviso:

“: Provided that where the rate prescribed in respect of a **[loan or advance or]** debt in terms of this definition is the spot rate on transaction date or the spot rate on the date on which such **[loan or advance or]** debt is realised, and any consideration paid or payable or received or receivable in respect of the acquisition or disposal of such **[loan or advance or]** debt was determined by applying a rate other than such spot rate on transaction date or date realised, such spot rate shall be deemed to be the acquisition rate or disposal rate, as the case may be”;

(f) by the deletion in subsection (1) of paragraphs (a) and (c) of the definition of “transaction date”;

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

“(a) any exchange difference in respect of an exchange item of or in relation to a person, subject to **[subsection]** subsections (10) and (10A);”;

(h) by the substitution in subsection (7)(a) for the words preceding subparagraph (i) of the following words:

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“any exchange difference arising from a **[loan, advance or]** debt having been **[utilized]** utilised by a person in respect of—”;

(i) by the substitution in subsection (7) for paragraphs (b) and (c) of the following paragraphs:

“(b) any exchange difference arising from a forward exchange contract or a foreign currency option contract which has been entered into by a person contemplated in paragraph (a), to the extent to which such forward exchange contract or foreign currency option contract is entered into to serve as a hedge in respect of a **[loan or advance obtained or to be obtained or a]** debt incurred or to be incurred for the **[utilization]** utilisation thereof as contemplated in paragraph (a); and

(c) any premium or other consideration paid or payable in respect of or in terms of a foreign currency option contract entered into or acquired by a person contemplated in paragraph (a), to the extent to which such foreign currency option contract is entered into or obtained in order to serve as a hedge in respect of a **[loan or advance obtained or to be obtained or a]** debt incurred or to be incurred for the **[utilization]** utilisation thereof as contemplated in paragraph (a),”;

(j) by the substitution in subsection (7) for paragraphs (a), (b) and (c) of the following paragraphs:

“(a) any exchange difference arising from a debt having been utilised by a person in respect of—

(i) the acquisition, installation, erection or construction of any machinery, plant, implement, utensil, building or improvements to any building, as the case may be; or

(ii) the devising, developing, creation, production, acquisition or restoration of any invention, patent, design, trade mark, copyright or other similar property or knowledge contemplated in section 11(gA) or (gC), as the case may be,

where that debt was incurred by that person during any year of assessment other than a year of assessment commencing on or after 1 January 2013;

(b) any exchange difference arising from a forward exchange contract or a foreign currency option contract which has been entered into by a person contemplated in paragraph (a) during any year of assessment other than a year of assessment commencing on or after 1 January 2013, to the extent to which such forward exchange contract or foreign currency option contract is entered into to serve as a hedge in respect of a debt incurred or to be incurred for the utilisation thereof as contemplated in paragraph (a); and

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- (c) any premium or other consideration paid or payable in respect of or in terms of a foreign currency option contract entered into or acquired by a person contemplated in paragraph (a) during any year of assessment other than a year of assessment commencing on or after 1 January 2013, to the extent to which such foreign currency option contract is entered into or obtained in order to serve as a hedge in respect of a debt incurred or to be incurred for the utilisation thereof as contemplated in paragraph (a),”;
- (k) by the substitution in the proviso to subsection (7) for paragraphs (a) and (b) of the following paragraphs:
- “(a) the [**loan, advance or**] debt to be [**obtained or**] incurred [, **as the case may be,**] as contemplated in paragraph (b) or (c) of this subsection will no longer be so [**obtained or**] incurred;
- (b) such [**loan, advance or**] debt has not been utilised as contemplated in paragraph (a); or”;
- (l) by the addition to subsection (7) of the following further proviso:
- “: Provided further that—
- (a) no such exchange difference, premium or other consideration may be carried forward to, or taken into account in, any year of assessment commencing on or after 1 January 2013; and
- (b) where such exchange difference would, but for this further proviso, have been carried forward to, or taken into account in, any year of assessment of a person commencing on or after 1 January 2013, the exchange item to which that exchange difference relates must, for purposes of this section, be deemed to have been realised on the last day of the last year of assessment before the year of assessment of that person commencing on or after 1 January 2013”
- (m) by the substitution in subsection (10) for the words preceding paragraph (a) of the following words:
- “Subject to [**the provisions of**] subsection (7A), no [**amount**] exchange difference arising during any year of assessment in respect of an exchange item shall in terms of this subsection be included in or deducted from the income of—”;
- (n) by the substitution for the proviso and the further proviso to subsection (10) of the following proviso and further provisos:
- “: Provided that [**where**] this subsection does not apply to any exchange difference arising during any year of assessment in respect of an exchange item if that exchange item is realised during [**any**] that year [of assessment], in which case the exchange difference in respect of

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that exchange item shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the date on which that exchange item is realised and the ruling exchange rate on transaction date, after taking into account any exchange difference included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment during which the person was a party to the contractual provisions of the exchange item: Provided further that any [**exchange difference in respect of any**] forward exchange contract or foreign currency option contract contemplated in paragraph (d) shall be deemed to [**arise**] be realised when the relevant exchange item contemplated in paragraph (a), (b) or (c) is realised: Provided further that any exchange item contemplated in paragraph (a), (b) or (c) or any forward exchange contract or foreign currency option contract contemplated in paragraph (d) that is held and not realised before the last day of any year of assessment of a person (that is the holder or issuer of that exchange item, forward exchange contract or foreign currency option contract) ending before the year of assessment of that person commencing on or after 1 January 2014 shall be deemed to have been realised on that last day”;

(o) by the insertion of the following subsection after subsection (10):

“(10A)(a) Subject to paragraph (b), no exchange difference arising during any year of assessment in respect of an exchange item contemplated in paragraph (b) of the definition of ‘exchange item’ shall be included in or deducted from the income of a person in terms of this section where—

(i) that person and the other party to the contractual provisions of that exchange item form part of the same group for the purposes of financial reporting pursuant to IFRS; and

(ii) that exchange item—

(aa) represents for that person a claim for which settlement is neither planned nor likely to occur in the foreseeable future; and

(bb) is not designated as an effective hedge, for the purposes of financial reporting pursuant to IFRS.

(b) Paragraph (a) does not apply to any exchange difference arising during a year of assessment in respect of an exchange item if—

(i) the parties to the contractual provisions of that exchange item cease to form part of the group contemplated in paragraph (a)(i) during that year; or

(ii) that exchange item is realised during that year,

in which case the exchange difference in respect of the exchange item shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the date on which that exchange item is realised and the ruling exchange rate on transaction date, after

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taking into account any exchange difference included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment during which the person was a party to the contractual provisions of the exchange item.”; and

(p) by the deletion of subsection (11).

(2) Paragraphs (g), (m), (n) and (o) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraphs (j) and (l) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(4) Paragraph (p) of subsection (1) comes into operation on 1 January 2013 and applies in respect of exchange differences arising on or after that date.

(2) Subsection (1) comes into operation on 1 January 2013.

Amendment of section 24J of Act 58 of 1962

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

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

“ **‘date of redemption’**, in relation to an instrument [**other than a demand instrument**], means—”;

(b) by the deletion in subsection (1) of the definition of “demand instrument”;

(c) by the deletion in subsection (1) of paragraphs (a) and (b) of the definition of “instrument”;

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

“(c) any [**secured or unsecured loan, advance or**] debt;”;

(e) by the addition in subsection (1) of the following proviso to the definition of “instrument”:

“: Provided that where the holder of an 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, that instrument must, unless the terms of that instrument provide for the payment of any deferred interest, be deemed not to be an instrument for the purposes of this section”;

(f) 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 issue or transfer of that instrument; or**

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(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;” and

(g) by the deletion of subsection (9).

(2) Paragraphs (a), (b), (e) and (f) of subsection (1) are deemed to have 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) Paragraphs (c) and (d) of subsection (1) come into operation on 1 January 2013.

(4) Paragraph (g) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 24JA of Act 58 of 1962, as inserted by section 48 of Act 7 of 2010 and amended by section 54 of Act 24 of 2011

61. (1) Section 24JA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraphs (d) and (e) of the following paragraphs:

“(d) the difference between the amount of consideration paid for the asset by the financier to the seller and the consideration payable to the financier by the client to acquire the asset as contemplated in paragraph [(a)(ii)(bb)] (b)(ii) 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 the financier to acquire the asset as contemplated in paragraph [(a)(i)] (a) of the definition of ‘murabaha’ is deemed to be an issue price for the purposes of section 24J.”.

(2) Subsection (1) comes into operation on the date on which section 54 of the Taxation Laws Amendment Act, 2011, comes into operation.

Insertion of section 24JB in Income Tax Act 58 of 1962

62. (1) The Income Tax Act, 1962, is hereby amended by the insertion of the following section after section 24JA:

“Fair value taxation in respect of financial instruments

24JB. (1) For the purposes of this section—

‘covered person’ means—

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(a) any authorised user as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), that is a company; or

(b) any—

(i) bank;

(ii) branch;

(iii) branch of a bank; or

(iv) controlling company,

as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);

‘**derivative**’ means a derivative as defined by International Accounting Standard 39 issued by the International Accounting Standards Board;

‘**financial asset**’ means a financial asset as defined by International Accounting Standard 32 issued by the International Accounting Standards Board;

‘**financial instrument**’ means a financial instrument as defined by International Accounting Standard 39 issued by the International Accounting Standards Board;

‘**financial liability**’ means a financial liability as defined by International Accounting Standard 32 issued by the International Accounting Standards Board;

‘**financial reporting value**’, in relation to a financial asset or a financial liability, means the value, as determined for the purposes of financial reporting pursuant to IFRS, of that financial asset or financial liability;

‘**post-realisation year**’, in relation to a person, means—

(a) the first year of assessment contemplated in paragraph (a) or (b), as the case may be, of the definition of ‘realisation year’ of that covered person; and

(b) each of the two years of assessment of that person succeeding that first year of assessment of that person;

‘**realisation year**’, in relation to a person, means—

(a) where that person became a covered person during any year of assessment ending before the year of assessment of that person commencing on or after 1 January 2013, the year of assessment of that person that precedes the first year of assessment of that person that commences on or after 1 January 2013; or

(b) where that person became a covered person during any year of assessment commencing on or after 1 January 2013, the year of assessment of that person that precedes the first year of assessment of that person in which that person becomes a covered person;

‘**tax value**’, in relation to—

(a) a financial asset held by a person, means—

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- (i) where that financial asset is held by that person as a capital asset, the base cost of that asset;
- (ii) where that financial asset is held by that person as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2); or
- (b) a financial liability of a person, means the face amount in respect of that liability.
- (2) Subject to subsection (4), there must be included in or deducted from the taxable income, as the case may be, of any covered person for any year of assessment commencing on or after 1 January 2013 all amounts in respect of financial assets and financial liabilities of that covered person that are recognised through the statement of profit or loss and other comprehensive income of that covered person for that year of assessment to the extent that those financial assets and financial liabilities are, in terms of IFRS—

 - (a) classified as held for trading; or
 - (b) designated upon initial recognition as at fair value through the statement of profit or loss and other comprehensive income of that covered person on the basis that the designation eliminates or reduces a measurement or recognition inconsistency.
- (3) A financial asset or a financial liability in respect of which an amount has been included in or deducted from the taxable income of a covered person for any year of assessment as contemplated in subsection (2) must not be taken into account for the purposes of—

 - (a) the definition of gross income and section 11; and
 - (b) the determination of any capital gain or capital loss of that person as contemplated in the Eighth Schedule.
- (4) Subsection (2) does not apply to any amount in respect of a financial asset or a financial liability of a covered person that is recognised through the statement of profit or loss and other comprehensive income of that covered person as contemplated in that subsection where—

 - (a) that financial asset or financial liability arises from a derivative to which that covered person and another person that is not a covered person are parties;
 - (b) that covered person and the other person contemplated in paragraph (a) form part of a group for the purposes of financial reporting pursuant to IFRS; and
 - (c) that covered person is a party to any financial instrument other than the derivative contemplated in paragraph (a), which financial instrument gives rise to any right or obligation that serves as a hedge in respect of that financial asset or financial liability.

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(5) In addition to any amount included in or deducted from the taxable income of any person in terms of subsection (2), there must be included in or deducted from the taxable income, as the case may be, of any person for a realisation year and each of the three post-realisation years of that person an amount determined in terms of subsection (6).

(6) Subject to subsection (7), the amount to be included in or deducted from the taxable income of any person as contemplated in subsection (5) is an amount equal to 25 per cent of the aggregate of—

(a) the difference between—

(i) the aggregate of the financial reporting values of all financial assets held by that person as at the end of the realisation year of that person that are, in terms of IFRS—

(aa) classified as held for trading; or

(bb) designated upon initial recognition as at fair value through the statement of profit or loss and other comprehensive income of that covered person on the basis that the designation eliminates or reduces a measurement or recognition inconsistency; and

(ii) the aggregate of the tax values of those financial assets as at the end of the realisation year of that person; and

(b) the difference between—

(i) the aggregate of the financial reporting values of all financial liabilities held by that person as at the end of the realisation year of that person that are, in terms of IFRS—

(aa) classified as held for trading; or

(bb) designated upon initial recognition as at fair value through the statement of profit or loss and other comprehensive income of that covered person on the basis that the designation eliminates or reduces a measurement or recognition inconsistency; and

(ii) the aggregate of the tax values of those financial liabilities as at the end of the realisation year of that person.

(7) For the purposes of subsection (6), in determining the amount to be included in or deducted from the taxable income of any person as contemplated in subsection (5), there must not be taken into account any financial asset or financial liability held by that person if—

(a) that financial asset or financial liability arises from a derivative to which that person and another person that is not a covered person are parties;

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(b) that person and the other person contemplated in paragraph (a) form part of a group for the purposes of financial reporting pursuant to IFRS; and

(c) that person is a party to any financial instrument other than the derivative contemplated in paragraph (a), which financial instrument gives rise to any right or obligation that serves as a hedge in respect of that financial asset or financial liability.”.

(2) Subsection (1) comes into operation on 31 December 2012 and applies in respect of years of assessment ending on or after that date.

Insertion of section 24O in Act 58 of 1962

63. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24N of the following section:

“Incurral of interest in terms of certain debts deemed to be in production of income

24O. (1) For the purposes of this section—

‘acquisition transaction’ means any transaction between a company and another company—

(a) in terms of which that company acquires an equity share of that other company; and

(b) as a result of which that company is a controlling group company in relation to that other company as at the close of the day of that transaction;

‘instrument’ means an instrument as defined in section 24J(1);

‘interest’ means interest as defined in section 24J(1).

(2) Subject to subsection (3), where during any year of assessment an instrument is issued or used by a company solely—

(a) for the purpose of financing directly the acquisition by that company of an equity share in another company in terms of an acquisition transaction; or

(b) in substitution for an instrument issued or used as contemplated in paragraph (a),

any interest incurred by that company in terms of that instrument must be deemed to have been so incurred in the production of the income of that company.

(3) Subsection (2) does not apply to so much of any interest incurred as relates to any period during which the company contemplated in that subsection is not a controlling group company in relation to the other company contemplated in that subsection: Provided that, for the purposes of this subsection, the company contemplated in subsection (2) will only be a controlling group company in relation to the other company contemplated in that subsection if that company and the other company form part of a group of companies as defined in section 41(1).”.

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(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisition transactions entered into on or after that date.

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 and section 55 of Act 24 of 2011

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

(a) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:

“(ii) [**within**] not later than 12 months [**of its receipt by**] after its accrual to that portfolio.”;
and

(b) 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) not later than 12 months after its accrual to that portfolio, be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its accrual to that portfolio.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 25BB in Act 58 of 1962

65. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 25BA of the following section:

“Taxation of real estate investment trusts

25BB. (1) For the purposes of this section, ‘**rental distribution**’ means any amount distributed by a REIT during any year of assessment if, during the year of assessment immediately preceding that year of assessment, more than 75 per cent of the gross income of that REIT consisted of amounts in the form of one or both of the following:

(a) amounts received by or accrued to the REIT in the form of rentals or other similar amounts derived by that REIT from immovable property; or

(b) amounts received by or accrued to the REIT by way of distribution from any other REIT.

(2) Any rental distribution made during any year of assessment by a REIT that is a resident to any person in respect of a share held by that person in that REIT must, for the purposes of—

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- (i) the definitions of ‘dividend’ and ‘return of capital’, be deemed not to have been distributed in respect of any share in that REIT;
- (ii) section 11(a), be deemed to be an amount of expenditure actually incurred by that REIT during that year of assessment in the production of the income of that REIT that is not of a capital nature; and
- (iii) the definition of ‘gross income’, be deemed to be an amount received by or accrued to that person by way of rental from a source within the Republic.

(3) Any amount received by or accrued to a REIT during a year of assessment in respect of a financial instrument must, if that REIT is a resident—

- (a) be deemed to be an amount that is not of a capital nature; and
- (b) be included in the income of that company for that year of assessment.

(4) Any capital gain or capital loss determined in respect of the disposal of an asset by a REIT must be disregarded in determining the aggregate capital gain or capital loss of that REIT for purposes of the Eighth Schedule.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of years of assessment commencing on or after that date.

Amendment of section 26B of the Income Tax Act 58 of 1962, as inserted by section 21 of Act 20 of 2006 and amended by section 24 of Act 8 of 2007

66. (1) Section 26B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The dividends tax [imposed on] levied in respect of the [net] amount of any dividend [declared, as determined in terms of section 64B(3)], as defined in section 64D, that is paid as contemplated in section 64E(2) by an oil and gas company, as defined in the Tenth Schedule, [as derived] out of [profits] amounts attributable to its oil and gas income [(, as defined in that Schedule)], shall be determined in accordance with this Act but subject to [the Tenth] that Schedule.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007, section 40 of Act 60 of 2008, section 40 of Act 17 of 2009 and Act 7 of 2010

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

(a) by the substitution for subsections (1) to (4) of the following subsections:

“(1) For the purposes of this section—

‘policy’ means—

(a) a short-term policy as defined in the Short-term Insurance Act; and

(b) a short-term reinsurance policy as defined in the Short-term Insurance Act ;

‘premium’ means a premium as defined in the Short-term Insurance Act;

‘Short-term Insurance Act’ means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

‘short-term insurer’ means a person registered or deemed to be registered as a short-term insurer under the Short-term Insurance Act;

‘short-term insurance business’ means short-term insurance business as defined in section 1 of the Short-term Insurance Act.

(2) For the purpose of determining the taxable income derived during a year of assessment by any person that is a resident from carrying on short-term insurance business—

(a) section 23(c) shall not apply;

(b) a premium received by or accrued to that person in respect of a policy issued by that person prior to the date of commencement of the risk cover under that policy shall be deemed to have been received by or accrued to that person on the date of commencement of the risk cover under that policy;

(c) an amount recoverable in respect of a claim incurred by that person under a policy shall only be included in the income of that person when the amount is received by that person; and

(d) an amount of expenditure actually incurred by that person in respect of any claim in terms of a policy shall be deemed to have been actually incurred by that person when the amount of the claim is paid by that person.

(3) Notwithstanding the provisions of section 23(e), for the purpose of determining the taxable income derived during a year of assessment by any person that is a resident from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that person—

(a) the amount estimated to become payable as contemplated in section 32(1)(a) of the Short-term Insurance Act in respect of that year of assessment: Provided that the short-term insurer shall take into account the amount which the short-term insurer estimates will be recoverable by the short-term insurer in respect of a short-term reinsurance policy as defined in the Short-term Insurance Act regardless of whether that short-term

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reinsurance policy is an approved reinsurance policy as defined in section 1 of the Short-term Insurance Act; and

(b) the amount of the unearned premium provision contemplated in section 32(1)(b) of the Short-term Insurance Act in respect of that year of assessment; Provided that —

(i) consideration payable in respect of a short-term reinsurance policy as defined in the Short-term Insurance Act shall be taken into account regardless of whether that short-term reinsurance policy is an approved reinsurance policy as defined in section 1 of the Short-Term Insurance Act; and

(ii) a reserve for a cash-back bonus, as defined in paragraph 1 of Board Notice 169 of 2011, published in *Gazette* No. 34715 of 28 October 2011, may only be taken into account if the short-term insurer has for purposes of that notice elected to use the method based on the best estimate of the amount of the cash bonus that will be payable by the short-term insurer.

(4) The total of all amounts deducted from the income of that person in respect of a year of assessment in terms of subsection (3) shall be included in the income of that person in the following year of assessment.”;

(b) by the deletion of subsection (5);

(c) by the deletion of subsection (6);

(d) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:

“In determining the net income, as contemplated in section 9D(2A), derived by any person that is a controlled foreign company from the carrying on outside the Republic of short-term insurance business [**as defined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998),**] there shall be deducted from the sum of all premiums (including reinsurance premiums) received by or accrued to that person in respect of the insurance or reinsurance of any risk and other amounts derived from the carrying on of that business, the sum of—”;

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

“(c) to the extent that the estimate and provision contemplated in subsection (7)(c) would have been allowed or required in terms of the Short-Term Insurance Act [**1998 (Act No. 53 of 1998),**] had the liability or provision been incurred in the Republic; and”;

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

“(9) Any deduction contemplated in subsection [(2) or] (7) shall be subject to such adjustments as may be made by the Commissioner.”.

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(2) Paragraphs (a), (c), (d) and (e) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 28A in Act 58 of 1962

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

“Investment policies disguised as short-term insurance policies

28A. (1) For the purposes of this section—

‘investment policy’ means a policy which is not an insurance contract as defined in IFRS 4;

‘policy’ means a short-term policy as defined in the Short-term Insurance Act;

‘policy benefits’ means policy benefits as defined in the Short-term Insurance Act;

‘premium’ means a premium as defined in the Short-term Insurance Act;

‘Short-term Insurance Act’ means the Short-term Insurance Act, 1998 (Act No. 53 of 1998).

(2) No deduction must be allowed in respect of any premium incurred by a person in terms of an investment policy.

(3) Where policy benefits are received by or accrue to a person in terms of an investment policy during a year of assessment, there must be included in the gross income of that person an amount equal to—

(a) the aggregate amount of all policy benefits received by or accrued to that person during that year of assessment and previous years of assessment in respect of that investment policy;

(b) less the aggregate amount of premiums incurred in terms of that investment policy that were not deductible in terms of subsection (2);

(c) less the aggregate amount of policy benefits in respect of that investment policy that were included in the gross income of that person during previous years of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of premiums incurred and policy benefits received or accrued on or after that date.

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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 and section 21 of Act 3 of 2008

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

(a) by the substitution for subsections (2) and (3) of the following subsections:

“(2) The taxable income derived by any insurer in respect of any year of assessment commencing on or after 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section and section 29B.

(3) Every insurer shall establish four separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section and section 29B.”;

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

“and such transfer shall for the purposes of this section and section 29B be deemed to have been made on such last day.”;

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

“(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund and corporate fund, shall be deemed to be separate companies which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections 9B, 20, 24I, 24J, 24K, 24L [**and**], 26A and 29B and the Eighth Schedule to this Act.”; and

(d) by the substitution in subsection (11) for the words following subitem (bb) and subsubitems (AA) and (BB) of the following words:

“which percentage shall be determined in accordance with the formula

$$Y = \frac{X}{Z}$$

in which formula—

(A) ‘Y’ represents the percentage to be applied to such amount;

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- (B) ‘X’ represents an amount which would have been equal to the taxable income calculated in respect of such fund and in respect of such year of assessment, but for any deduction during such year of any amount incurred in respect of—
- (AA) of the selling and administration of policies; and
 - (BB) any indirect expenses allocated to such fund; and
- (C) ‘Z’ represents an amount equal to the amount represented by X in the formula, plus—
- (AA) the aggregate of all dividends that are exempt and that are received in respect of such fund during such year;
 - (BB) the aggregate of all foreign dividends received in respect of such fund during such year, after taking into account any tax imposed in respect of such dividend by any sphere of government of any country other than the Republic; and
 - (CC) any portion of the aggregate capital gain or aggregate capital loss in respect of such fund and in respect of such year that is not included in the taxable income in respect of such fund and in respect of such year; and”.

(2) Paragraphs (a), (b) and (c) of subsection (1) are deemed to have come into operation on 29 February 2012.

(3) Paragraph (d) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 29B in Income Tax Act 58 of 1962

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

“Mark-to-market taxation in respect of long-term insurers

29B. (1) For the purposes of this section, any word or expression that has been defined in section 29A must bear the same meaning as defined in that section, and—

‘derivative’ means any contractual agreement or arrangement, other than a share or a debt, between one party and another party that gives rise to a right of one of those parties and to a corresponding obligation of the other party, where the value of that right and the amount of that obligation is determined directly or indirectly with reference to—

- (a) the value of an asset;
- (b) the amount of a debt;
- (c) a financial instrument; or

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(d) a rate index or specified index;

'derivative difference', in respect of a derivative to which an insurer is a party, means an amount determined in respect of—

(a) the disposal of a right by that insurer; or

(b) the discharge from an obligation of that insurer,

arising from that derivative, which amount is equal to—

(i) where that amount is to be determined in respect of the disposal of a right, the difference between—

(aa) the market value of the right on the date on which the insurer disposed of that right; and

(bb) the market value of the right on the date on which the insurer acquired that right;
or

(ii) where that amount is to be determined in respect of the discharge from an obligation, the difference between—

(aa) the amount owing in respect of that obligation on the date on which the insurer is discharged from that obligation; and

(bb) the amount owing in respect of that obligation on the date on which the insurer assumed that obligation;

'realisation year', in relation to an insurer, means the first year of assessment of that insurer that ends on or after 29 February 2012.

(2) An insurer must, on—

(a) 29 February 2012; and

(b) the last day of each year of assessment ending on or after 1 March 2012,

be deemed to have disposed of each asset (other than an asset that constitutes a debt owed to the insurer or that constitutes a right arising from a derivative to which the insurer is a party) held by that insurer in respect of its company policyholder fund and individual policyholder fund.

(3) Where an asset is deemed to have been disposed of by an insurer as contemplated in subsection (2) on any date contemplated in that subsection—

(a) that asset must be deemed to have been so disposed of on that date for an amount received or accrued equal to the market value of the asset on that date; and

(b) that insurer must be deemed to have immediately reacquired that asset at an expenditure equal to the market value contemplated in paragraph (a), which expenditure must be deemed—

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(i) where that asset is held by the insurer as a capital asset, to be an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a) of the Eighth Schedule.; or

(ii) where that asset is held by the insurer as trading stock, to be the amount to be taken into account by the insurer in respect of the asset for the purposes of section 11(a) or 22(1) or (2).

(4)(a) An insurer must, on—

(i) 29 February 2012; and

(ii) the last day of each year of assessment ending on or after 1 March 2012,

be deemed to have disposed of each asset that constitutes a debt owed to that insurer in respect of its company policyholder fund and individual policyholder fund for an amount equal to the amount outstanding in respect of that debt on that date, which disposal must, for the purposes of section 24J, be deemed to be a transfer as defined in subsection (1) of that section.

(b) Where an asset that constitutes a debt owed to an insurer is deemed to have been disposed of by that insurer as contemplated in paragraph (a) on any date contemplated in that subsection, that insurer must be deemed to have immediately reacquired that debt at an expenditure equal to the amount contemplated in that paragraph, which reacquisition must, for the purposes of section 24J, be deemed to be a transfer as defined in subsection (1) of that section.

(5) An insurer that is a party to a derivative in respect of its company policyholder fund or individual policyholder fund must, on—

(a) 29 February 2012; and

(b) the last day of each year of assessment ending on or after 1 March 2012,

be deemed to have ceased to be a party to that derivative and having, on each of those dates—

(i) thereby disposed of any right held by that insurer; or

(ii) been thereby discharged from any obligation of that insurer,

arising from that derivative, and to have immediately thereafter again become a party to that derivative and to have thereby—

(aa) reacquired the right contemplated in subparagraph (i); or

(bb) reassumed the obligation contemplated in subparagraph (ii).

(6) Where an asset is deemed to have been disposed of by an insurer as contemplated in subsection (2) and that asset, in the hands of that insurer, constitutes an asset as defined in paragraph 1 of the Eighth Schedule which does not constitute trading stock, that disposal

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must not be taken into account for the purposes of determining the amount of any allowance or deduction—

(a) to which that insurer may be entitled in respect of that asset; or

(b) that is to be recovered or recouped by or included in the income of that insurer in respect of that asset.

(7)(a) An insurer must, in respect of each year of assessment ending on or after 1 March 2012, include in the aggregate capital gain or aggregate capital loss of those funds for that year of assessment and each of the three years of assessment following that year of assessment an amount equal to 25 per cent of an amount determined in terms of paragraph (b).

(b) The amount to be determined for the purposes of paragraph (a) is an amount equal to the aggregate of—

(a) all capital gains and losses determined in respect of the disposal, on the last day of that year of assessment, of any asset as contemplated in subsection (2) or (4); and

(b) all capital gains and losses that are attributable to derivative differences determined in respect of the disposal (or discharge), on the last day of that year of assessment, of any right (or from any obligation) as contemplated in subsection (5).

(8)(a) In addition to any inclusion in any aggregate capital gain or aggregate capital loss of the company policyholder fund or individual policyholder fund of an insurer in terms of subsection (7)(a), an insurer must, in respect of its company policyholder fund and its individual policyholder fund, include in the aggregate capital gain or aggregate capital loss of those funds for the realisation year and each of the three years of assessment following that realisation year an amount equal to 18.75 per cent of an amount determined in terms of paragraph (b).

(b) The amount to be determined for the purposes of paragraph (a) is an amount equal to the aggregate of—

(i) all capital gains and losses determined in respect of the disposal, on 29 February 2012, of any asset as contemplated in subsection (2) or (4); and

(ii) all capital gains and losses that are attributable to derivative differences determined in respect of the disposal (or discharge), on 29 February 2012, of any right (or from any obligation) as contemplated in subsection (5).”

(2) Subsection (1) is deemed to have come into operation on 29 February 2012.

Amendment of section 31 of Act 58 of 1962, as substituted by section 56 of Act 24 of 2011

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71. (1) Section 31 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “financial assistance” of the following paragraph:

“(a) **[loan, advance or]** debt; or”;

(b) by the deletion in subsection (5) of the word “or” at the end of paragraph (a);

(c) by the substitution in subsection (5) for the full-stop at the end of paragraph (b) of a semi-colon;

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

“(c) any other person that is not a resident and that transaction, operation, scheme, agreement or understanding is in respect of the granting of the use, right of use or permission to use any intellectual property as defined in section 23I(1) by that other person to that headquarter company, this section does not apply to the extent that the headquarter company—

(i) grants that use, right of use or permission to use that intellectual property 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; and

(ii) does not make use of that intellectual property otherwise than as contemplated in subparagraph (i); or

(d) 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 the use, right of use or permission to use any intellectual property as defined in section 23I(1) by that headquarter company to that foreign company, this section does not apply to that granting to that foreign company.”; and

(e) by the insertion after subsection (5) of the following subsection:

“(6) Where any transaction, operation, scheme, agreement or understanding that comprises the granting of—

(a) financial assistance; or

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

by a person that is a resident to a controlled foreign company in relation to that resident, this section must not be applied in calculating the taxable income or tax payable by that resident

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in respect of any amount received by or accrued to that resident in terms of that transaction, operation, scheme, agreement or understanding if—

- (i) that resident owns at least 10 per cent of the equity shares and voting rights in that controlled foreign company;
- (ii) that controlled foreign company has a foreign business establishment as defined in section 9D(1); and
- (iii) the aggregate amount of tax payable to all spheres of government of any country other than the Republic by that controlled foreign company in respect of any foreign tax year of that controlled foreign company during which that transaction, operation, scheme, agreement or understanding exists is at least 75 per cent of the amount of normal tax that would have been payable in respect of any taxable income of that controlled foreign company had that controlled foreign company been a resident for that foreign tax year.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013.

(3) Paragraphs (b), (c) and (d) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(4) Paragraph (e) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Repeal of section 35 of Act 58 of 1962

72. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 35.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of—

- (a) amounts received or accrued; and
 - (b) amounts paid or that become payable,
- on or after that date.

Amendment of section 37B of Act 58 of 1962, as inserted by section 48 of Act 35 of 2007 and amended by section 45 of Act 60 of 2008 and section 44 of Act 17 of 2009

73. (1) Section 37B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

- “(a) in the case of a new and unused environmental treatment and recycling asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), 40 per cent of the

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cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 20 per cent in each succeeding year of assessment; and

- (b) in the case of a new and unused environmental waste disposal asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and five per cent in each succeeding year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Repeal of section 37H of Act 58 of 1962

74. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 37H.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2013.

Substitution of Part IA of Chapter II of Act 58 of 1962

75. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the substitution for Part IA of the following Part:

“Part IA

Withholding tax on interest

Definitions

37I. (1) In this Part—

‘bank’ means any—

(a) bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);

(b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or

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(c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

‘foreign person’ means any person that is not a resident;

‘goods’ means any corporeal movable thing;

‘Government debt’ means any debt owed by the government of the Republic in the national, provincial or local sphere;

‘interest’ means interest as defined in section 24J(1);

‘listed debt’ means any debt that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;

‘South African Reserve Bank’ means the central bank of the Republic regulated in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

Levy of withholding tax on interest

37J. (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 15 per cent of the amount of any interest that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within the Republic in terms of section 9(2)(b).

(2) For the purposes of this Part, interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes payable.

(3) The withholding tax on interest is a final tax.

Liability for tax

37JA. (1) A foreign person to which an amount of interest is paid is liable for the withholding tax on interest to the extent that the interest is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(b).

(2) Where any amount of withholding tax on interest is—

(a) withheld as contemplated in section 37L(1); and

(b) paid as contemplated in section 37M(2),

that amount of withholding tax on interest must be regarded as an amount that is paid in respect of that foreign person’s liability under subsection (1).

Exemption from withholding tax on interest

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37K. (1) Subject to subsection (2), there must be exempt from the withholding tax on interest any amount of interest—

(a) if that amount of interest is paid to any foreign person—

(i) in respect of any government debt;

(ii) in respect of any listed debt;

(iii) in respect of any debt owed by—

(aa) any bank; or

(bb) the South African Reserve Bank;

(iv) in respect of any bill of exchange, letter of credit or similar instrument—

(aa) to the extent that the interest is payable in respect of the purchase price of goods imported into the Republic; and

(bb) if an authorised dealer as defined in the Exchange Control Regulation 1961 (as promulgated by Government Notice No. R.1111 of 1 December 1961 and amended up to Government Notice No. R.885 in *Government Gazette* No. 20299 of 23 July 1999), has certified on the instrument that a bill of lading or other document covering the importation of the goods has been exhibited to it; or

(vi) by a headquarter company in respect of financial assistance that is not subject to section 31 as a result of the application of section 31(5);

(b) payable as contemplated in section 27(6) of the Securities Services Act, 2004 (Act No. 36 of 2004), to any foreign person that is a client as defined in section 1 of that Act; or

(c) that is deemed to have accrued to any foreign person in terms of section 25BA(a).

(2) Interest paid to a foreign person in respect of any amount advanced, whether directly or indirectly, by the foreign person to a bank will not be exempt from the withholding tax on interest if the amount is advanced in the course of any arrangement, transaction, operation or scheme to which the foreign person and any other person are parties and in terms of which the bank advances any amount to that other person on the strength directly or indirectly of the amount advanced by the foreign person to the bank.

(3) A foreign person will be exempt from the withholding tax on interest if that foreign person—

(a) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is paid;

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- (b) at any time during the twelve-month period preceding the date on which the interest is paid carried on business through a permanent establishment in the Republic; or
- (c) is a controlled foreign company as defined in section 9D.

Withholding of withholding tax on interest by payers of interest

37L. (1) Subject to subsections (2) and (3), any person who makes payment of any amount of interest to or for the benefit of a foreign person must withhold an amount equal to 15 per cent of that amount of interest from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection (1)—

(a) to the extent that the interest is exempt from the withholding tax on interest in terms of section 37K(1); or

(b) if the foreign person to or for the benefit of which that payment is to be made has—

(i) by a date determined by the person making the payment; or

(ii) if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 37K(3), exempt from the withholding tax on interest in respect of that payment.

(3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has—

(a) by a date determined by the person making the payment; or

(b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation.

(4) Where a person making payment of any amount of interest to or for the benefit of a foreign person has withheld an amount as contemplated in subsection (1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

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 to or for the benefit of the foreign person, that foreign person must pay that amount 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.

Refund of withholding tax on interest

37N. Notwithstanding section 102, if—

- (a) an amount is withheld from a payment of an amount of interest as contemplated in section 37L(1);
- (b) a declaration contemplated in section 37L(2)(b) or (3) 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(2)(b) or (3) is submitted to the Commissioner 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 by the Commissioner to the person to which the interest was paid.

Currency of payments made to Commissioner

37O. If an amount withheld by a person in terms of section 37L(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 37M(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of—

- (a) interest that accrues; and
 - (b) interest that is paid or that becomes payable,
- on or after that date.

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Amendment of section 37K of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010 and amended by section 63 of Act 24 of 2011

76. (1) Section 37K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraphs (a), (b) and (c) of the following paragraphs:

- “(a) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is paid; or
- (b) at any time during the twelve-month period preceding the date on which the interest is paid carried on business through a permanent establishment in the Republic; **or**
- (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 interest that is paid or that becomes payable during years of assessment commencing on or after that date.

Insertion of section 40CA in Act 58 of 1962

77. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 40C of the following section:

“Acquisitions of assets in exchange for shares or debt issued

40CA. (1) Subject to section 24B, if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person in exchange for—

- (a) shares issued by that company, that company must be deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to the market value of the shares immediately after the acquisition; or
- (b) any amount of debt issued by that company, that company must be deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to that amount of debt.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisitions made on or after that date.

Amendment of heading to Part III 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 and section 51 of Act 35 of 2007

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78. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the substitution for the heading to Part III of the following heading:

“Special rules relating to asset-for-share transactions, substitutive share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into 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, section 61 of Act 7 of 2010 and section 67 of Act 24 of 2011

79. (1) Section 41 of the Income Tax Act, 1962, is hereby amended 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, a substitutive share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 24B(2), 24BA, 24BB and 103 and Part IIA of Chapter III.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

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, section 62 of Act 7 of 2010 and section 68 of Act 24 of 2011

80. (1) Section 42 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words in paragraph (a)(i) of the definition of “asset-for-share transaction” following item (bb) of the following words:

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“to a company which is a resident, in exchange for the issue of an equity share or share of that company and that person—”;

(b) by the substitution in subsection (1) for paragraph (b) of the definition of “asset-for-share transaction” of the following paragraph:

“(b) in terms of which a person that is a company disposes of an asset that constitutes an equity share held by that person in a foreign company as a capital asset, 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),]**

the base cost of that equity share on the date of that disposal, to another foreign company[,]

 in exchange for an equity share in that other foreign company and—

(i) 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**] and the other foreign company form part of the same group of companies (as defined in section 1); and

(bb) the other foreign company is a controlled foreign company in relation to any company that is a resident and that forms part of [the same] that group of companies[, as defined in section 1, as that person]; and

(ii) at the close of the day on which the asset is disposed of in terms of that transaction—

(aa) more than 50 per cent of the equity shares of the foreign company are directly or indirectly held by a resident (whether alone or together with any company forming part of the same group of companies as that resident); or

(bb) that person is a resident and directly or indirectly (whether alone or together with any other person that is a resident and that forms part of the same group of companies as that person) holds the equity share in the other foreign company that is acquired in exchange for the equity share disposed of by that person in terms of that transaction;”;

(c) by the substitution in subsection (1) for subparagraph (iii) of paragraph (a) of the definition of “qualifying interest” of the following subparagraph:

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“(iii) equity shares held by that person in a company that constitute at least [20] 10 per cent of the equity shares and that confer at least [20] 10 per cent of the voting rights of that company; or”;

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

“(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] 10 per cent of the equity shares and that confer at least [20] 10 per cent of the voting rights of the foreign company.”;

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

“(6) Where a person—

(a) disposed of 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 paragraph (a)(iii) and (iv) of the definition of ‘qualifying interest’ (whether or not as a result of the disposal of shares in that company); or

(ii) 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 paragraph (a)(i)(B) of the definition of ‘asset-for-share transaction’;

that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—

(aa) disposed of all the equity shares acquired in terms of that asset-for-share transaction that are still held immediately after that person ceased—

(A) to hold the qualifying interest contemplated in subparagraph (i); or

(B) to be engaged as contemplated in subparagraph (ii),

for an amount equal to the market value of those equity shares as at the date of the disposal in terms of the asset-for-share transaction; and

(bb) immediately reacquired all the equity shares contemplated in item (aa) at a cost equal to the amount contemplated in that item:

Provided that this paragraph does not apply where the person ceases to hold a qualifying interest in that company as a result of—

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- (a) an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47;
 - (b) an involuntary disposal contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument; or
 - (c) the death of that person; or
- (b) disposed of an equity share in a foreign company to **[a]** another foreign company in terms of an asset-for-share transaction contemplated in paragraph (b) of the definition of ‘asset-for-share transaction’ and, at any time 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)],**
- (i) where that asset-for-share transaction was constituted as a result of compliance with the requirement prescribed by paragraph (b)(ii)(aa) of that definition, that requirement is no longer met; or
 - (ii) where that asset-for-share transaction was constituted as a result of compliance with the requirement prescribed by paragraph (b)(ii)(bb) of that definition, that requirement is no longer met,
- that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—
- [(A)](aa) 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]** the applicable requirement is no longer met, for an amount equal to the market value of those equity shares as at the **[beginning of that period of 18 months]** date of the disposal in terms of the asset-for-share transaction; and**

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[(B)](bb) immediately reacquired all the equity shares contemplated in **[paragraph (a)] item (aa)** at a cost equal to the amount contemplated in that **[paragraph] item**:

Provided that **[the provisions of]** this **[subsection do]** paragraph does not apply where **[that person ceases to hold a qualifying interest in that company in terms]** any requirement prescribed by paragraph (b)(ii)(aa) or (bb) of the definition of asset-for-share transaction is no longer met as a result of—

(a) an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47~~[,]~~; or

(d) an involuntary disposal **[as]** contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument~~[,] or as the result of the death of that person]~~.”;

(f) 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) or (b), treat so much of the face value of that debt as relates to that equity share—

[(aa)](A) where that equity share is held as a capital asset, as **[a return of capital by way of a distribution of cash]** an amount received or accrued in respect of that equity share that accrues to that person immediately after the **[acquisition]** disposal by that person of that equity share **[in terms of that asset-for-share transaction]**; or

[(bb)](B) 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]** disposed of by that person **[in terms of that asset-for-share transaction]**.”.

(2) Paragraph (a) of subsection (1) comes into effect on 1 January 2013 and applies in respect of transactions entered into on or after that date.

(3) Paragraphs (b) and (e) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(4) Paragraphs (c) and (d) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

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(5) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of transactions entered into on or after that date.

Insertion of section 43 in Act 58 of 1962

81. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 42 of the following section:

“Substitutive share-for-share transactions

43. (1) For the purposes of this section—

‘conversion transaction’ means any transaction in terms of which a close corporation is converted to a company

(b) a co-operative is converted to a company as contemplated in section 40B;

‘equity share interest’ means a single equity share or a number of equity shares;

‘substitutive share-for-share transaction’ means a conversion transaction or any other transaction in terms of which—

(a) a person disposes of an equity share interest in a company and acquires another equity share interest in that company by means of a substitution, subdivision, consolidation or similar transaction; and

(b) that other equity share interest is acquired by that person—

(i) as either a capital asset or as trading stock, in the case where the equity share interest disposed of is disposed of as a capital asset; or

(ii) as trading stock in the case where the equity share interest disposed of is disposed of as trading stock.

(2) Subject to subsection (4), where a person disposes of an equity share interest in a company and acquires another equity share interest in that company in terms of a substitutive share-for-share transaction, that person must be deemed to have—

(a) disposed of that equity share interest so disposed of for an amount equal to the expenditure incurred by that person in respect of that equity share interest so disposed of which is or was allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be;

(b) acquired that other equity share interest so acquired on the latest date on which that person acquired any equity share comprising the equity share interest so disposed of for a

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cost equal to the expenditure incurred by that person as contemplated in paragraph (a);
and

(c) incurred the cost contemplated in paragraph (b) on the date on which that person incurred the expenditure in respect of the equity share interest so disposed of, which cost must be treated as—

(i) an expenditure actually incurred and paid by that person in respect of the equity share interest so acquired for the purposes of paragraph 20 of the Eighth Schedule, if the equity share interest so acquired is acquired as a capital asset; or

(ii) the amount to be taken into account by that person in respect of the equity share interest so acquired for the purposes of section 11(a) or 22(1) or (2), if the equity share interest so acquired is acquired as trading stock.

(3) Subject to subsection (4), any valuation of an equity share interest disposed of in terms of a substitutive share-for-share transaction which was done by the person disposing of that equity share interest within the period contemplated in paragraph 29(4) of the Eighth Schedule is deemed to have been done by that person in respect of the equity share interest acquired by that person in terms of that substitutive share-for-share transaction.

(4)(a) This subsection applies where—

(i) a person disposes of an equity share interest in a company in terms of a substitutive share-for-share transaction; and

(ii) that person becomes entitled, in exchange for that equity share interest, to any consideration other than another equity share interest that is acquired by that person in terms of that substitutive share-for-share transaction.

(b) Where a person disposes of an equity share interest in terms of a substitutive share-for-share transaction and becomes entitled to consideration other than another equity share interest as contemplated in paragraph (a)(ii)—

(i) subsections (2) and (3) must not apply to the part of the equity share interest so disposed of that relates to that consideration; and

(ii) either—

(aa) where that equity share interest is so disposed of as a capital asset, the base cost at the time of that disposal of the part of the equity share interest contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the base cost of the equity share interest so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the equity share interest acquired by that person in terms of that substitutive share-for-share transaction; or

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(bb) where that equity interest is so disposed of as trading stock, the amount to be taken into account in terms of section 11(a) or 22(1) or (2) in respect of the part of the equity share interest contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the total amount taken into account in terms of section 11(a) or 22(1) or (2) in respect of the equity share interest so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the equity share interest acquired by that person in terms of that substitutive share-for-share transaction.”

(2) Subsection (1) comes into operation on 1 January 2013 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, section 63 of Act 7 of 2010 and section 69 of Act 24 of 2011

82. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—

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

“ **‘amalgamation transaction’** means any transaction—

- (a)* (i) in terms of which any company (hereinafter referred to as the ‘amalgamated company’) which is a resident 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
- (ii) as a result of which **[that amalgamated company’s]** the existence of that amalgamated company will be terminated; **[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]** resident, 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**

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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 companies contemplated in item (aa) immediately before and after that transaction]

immediately before that transaction, that amalgamated company and that resultant company form part of the same group of companies (as defined in section 1); and

(iii) as a result of which **[that amalgamated company’s]** the existence of that amalgamated company will be terminated; or

(c) (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) immediately before that transaction—

(A) that amalgamated company and that resultant company form part of the same group of companies (as defined in section 1); and

(B) that resultant company is a controlled foreign company in relation to any resident that is part of the group of companies contemplated in subitem (A); and

(bb) immediately after that transaction, more than 50 per cent of the equity shares in that resultant company are directly or indirectly held by a resident (whether alone or together with any other person that is a resident and that forms part of the same group of companies as that resident); and

(iii) as a result of which the existence of that amalgamated company will be terminated.”;

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

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“: Provided that this paragraph does not apply to any asset disposed of in terms of an amalgamation transaction contemplated in paragraph (b) or (c) of the definition of ‘amalgamation transaction’ if, on the date of that disposal, the market value of that asset is less than the base cost of that asset”;

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

“: Provided that this paragraph does not apply to any asset disposed of in terms of an amalgamation transaction contemplated in paragraph (b) or (c) of the definition of ‘amalgamation transaction’ if, on the date of that disposal, the market value of that asset is less than the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2)”;

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

“(b) the assumption by that resultant company of a debt of that amalgamated company, **[unless]** that **[debt]**—

(i) was incurred by that amalgamated company—

(aa) more than 18 months before that disposal; or

(bb) within a period of 18 months before that disposal, to the extent that the debt—

(A) constitutes the refinancing of any debt incurred as contemplated in subparagraph (aa); or

(B) is attributable to and arose in the **[normal]** ordinary course of **[the disposal, as a going concern, of]** a business undertaking disposed of, as a going concern, to that resultant company as part of that amalgamation transaction; and

(ii) was not incurred by that amalgamated company for the purpose of procuring, enabling, facilitating or funding the acquisition by that resultant company of any asset in terms of that amalgamation transaction.”;

(e) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) Subject to subsection (7), this subsection applies where[—

(i)] a person disposes of **[any equity shares]** an equity share in an amalgamated company as a result of the liquidation, winding-up or deregistration of that amalgamated company and acquires equity shares in the resultant company as part of an amalgamation transaction in respect of which subsection (2) or (3) applied, which equity shares in the resultant company are acquired—

[(aa)](i) as either capital assets or trading stock, in the case where that equity share in the amalgamated company is disposed of as a capital asset; or

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[(*bb*)](*ii*) as trading stock in the case where that equity share in the amalgamated company is disposed of as trading stock.”;

(*f*) by the substitution in subsection (6)(*b*)(*iii*) for the words preceding item (*aa*) of the following words:

“[**to have**] incurred the cost contemplated in subparagraph (*ii*) on the date on which that person incurred the expenditure in respect of the equity share in the amalgamated company, which cost must be treated as—”; and

(*g*) 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 for purposes of Part VIII of Chapter II**] disregarded in determining any liability for dividends tax; and”.

(2) Paragraphs (*a*), (*b*) and (*c*) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(3) Paragraph (*d*) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of transactions entered into on or after that date.

(4) Paragraphs (*e*) and (*f*) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(5) Paragraph (*g*) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of disposals made on or after that date.

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, section 64 of Act 7 of 2010 and section 70 of Act 24 of 2011

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

(a) by the substitution in subsection (1) for the definition of “intra-group transaction” of the following definition:

“ ‘**intra-group transaction**’ means any transaction—

(a) (i) in terms of which any asset is disposed of by one company (hereinafter referred to as the ‘transferor company’) to another company [**which is a resident**] (hereinafter referred to as the ‘transferee company’) and both companies form part of the same group of companies as at the end of the day of that transaction; and

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~~[(b)](ii)~~ as a result of which that transferee company acquires that asset from that transferor company—

~~[(i)](aa)~~ as a capital asset, where that transferor company holds it as a capital asset; or

~~[(ii)](bb)~~ as trading stock, where that transferor company holds it as trading stock; or

~~(b) (i)~~ in terms of which any asset that constitutes an equity share held by a transferor company as a capital asset in a foreign company is disposed of by that transferor company to a transferee company;

~~(ii)~~ as a result of which that transferee company acquires that asset from that transferor company as a capital asset; and

~~(iii)~~ if, immediately before and as at the end of the day of that transaction—

~~(aa)~~ that transferee company and that transferor company form part of the same group of companies (as defined in section 1); and

~~(bb)~~ either—

~~(A)~~ that transferor is a controlled foreign company in relation to one or more residents that form part of that group of companies; or

~~(B)~~ that transferee is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies.”;

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

“: Provided that in the case of an intra-group transaction contemplated in paragraph (b) of the definition of ‘intra-group transaction’, this paragraph does not apply to any asset that constitutes an equity share disposed of to a transferee company in terms of that intra-group transaction if the base cost of that equity share exceeds the market value of that equity share at the time of that disposal”;

(c) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:

“an asset held by it as trading stock in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ to a transferee company which acquires it as trading stock—”;

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

“an asset that constitutes an allowance asset in that transferor company’s hands to a transferee company in terms of an intra-group transaction contemplated in paragraph (a) of the

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definition of ‘intra-group transaction’ and that transferee company acquires that asset as an allowance asset—”;

- (e) by the substitution in subsection (3)(b) for the words preceding subparagraph (i) of the following words:

“a contract to a transferee company as part of a disposal of a business as a going concern in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ and that contract imposes an obligation on that transferor company in respect of which an allowance in terms of section 24C was allowable to that transferor company for the year preceding that in which that contract is transferred or would have been allowable to that transferor company for the year of that transfer had that contract not been so transferred—”;

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

“(i) any amount incurred by that transferee company as consideration for the acquisition of that asset from that transferor company is funded directly or indirectly by the issue of any[—
(aa)] debt [**instrument as defined in section 37I (1);**] or
[(bb)] share other than an equity share; and”;

- (g) by the substitution in subsection (3A)(a)(ii) for the words preceding item (aa) of the following words:

“that debt [**instrument**] or share—”;

- (h) by the substitution in subsection (3A) for paragraph (b) of the following paragraph:

“(b) The holder of any debt [**instrument**] or share contemplated in paragraph (a) who is part of the same group of companies as the issuer of that debt [**instrument**] or share must, for the purposes of—

(i) paragraph 20 of the Eighth Schedule, be deemed to have acquired that debt [**instrument**] or share for an amount of expenditure of nil; and

(ii) section 11(a) or 22 (1) or (2), be deemed to have acquired that debt [**instrument**] or share for an amount of expenditure or cost of nil.”;

- (i) by the substitution in subsection (3A) for paragraph (c) of the following paragraph:

“(c) Where an amount, other than an amount of interest, is received by or [**accrued**] accrues to a holder in respect of a debt instrument contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt instrument, that amount must be disregarded in determining the aggregate capital gain or the

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taxable income of that holder to the extent that that amount reduces the liability of that holder to the issuer of that debt instrument.”;

(j) by the substitution in subsection (3A) for paragraphs (c) and (d) of the following paragraphs:

“(c) Where an amount, other than an amount of interest or an amount previously taken into account as interest, is received by or accrues to a holder in respect of a debt instrument contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt instrument, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder to the extent that that amount reduces the liability of that holder to the issuer of that debt instrument.

(d) Where an amount, other than an amount that constitutes a dividend or an amount previously taken into account as a dividend, is received by or accrued to a holder in respect of a share contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied in reduction of the capital subscribed for that share, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder.”.

(k) by the substitution in subsection (3A) for paragraph (c) of the following paragraph:

“(c) Where an amount, other than an amount of interest or an amount previously taken into account as interest, is received by or accrues to a holder in respect of a debt **[instrument]** contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt **[instrument]**, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder to the extent that that amount reduces the liability of that holder to the issuer of that debt **[instrument]**.”;

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

“Where a transferee company contemplated in paragraph (a) of the definition of ‘intra-group transaction’ which has acquired an asset as contemplated in paragraph (a) ceases within a period of six years after the acquisition to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) or a controlling group company in relation to the transferor company, and the transferee company has not disposed of that asset—”;

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

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“(bA) Where a transferee company contemplated in paragraph (b) of the definition of ‘intra-group transaction’ which has acquired an asset that constitutes an equity share as contemplated in paragraph (a)—

(i) ceases within a period of six years after the acquisition—

(aa) to form part of any group of companies (as defined in section 1) in relation to—

(A) the transferor company contemplated in paragraph (a)(i); or

(B) any controlling group company of a group of companies (as defined in section 1) in relation to that transferor company; or

(bb) to be a controlled foreign company in relation to any resident that is part of any group of companies contemplated in item (aa); and

(ii) at the time of so ceasing, that transferee company has not disposed of that equity share, an amount equal to the lesser of—

(AA) the greatest capital gain that would have been determined in respect of any disposal of the equity share in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceased to form part of the group of companies as contemplated in item (aa), had subsection (2) not applied in respect of that disposal; or

(BB) the capital gain that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies as contemplated in item (aa) for an amount equal to the market value of the equity share on that date,

must be deemed to be a capital gain of the transferee company for the year of assessment in which the transferee company ceased to form part of the group of companies as contemplated in item (aa) and applied to increase the base cost of the equity share.”; and

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

“(c) Where the transferor company or transferee company contemplated in paragraph (b) or (bA) is liquidated, wound up or deregistered at a time when a company which is a resident (hereinafter referred to as the ‘holding company’) holds at least 70 per cent of the equity shares of that company which is liquidated, wound up or deregistered, the holding company and the company which is liquidated, wound up or deregistered must be deemed to be one and the same company for purposes of paragraph (b) or (bA).”.

(2) Paragraphs (a), (b), (c), (d), (e), (l), (m) and (n) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (f), (g), (h) and (k) of subsection (1) come into operation on 1 January 2013.

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(4) Paragraph (i) of subsection (1) is deemed to have come into operation on 30 August 2011 and applies in respect of debt instruments issued on or after that date.

(5) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of years of assessment commencing 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, section 65 of Act 7 of 2010 and section 71 of Act 24 of 2011

84. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—

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

“(1) For the 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 that are held by a company (hereinafter referred to as the ‘unbundling company’) which is a resident, are distributed by that unbundling company to [**the**] any 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 equity shares are so distributed—

(aa) where that unbundling company is a listed company and the equity shares of the unbundled company are listed shares or will become listed shares within 12 months after that distribution, to the shareholders of that unbundling company;

(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

(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; and

(ii) if the equity shares distributed as contemplated in subparagraph (i) constitute—

(aa) where that unbundled company is a listed company immediately before that distribution—

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- (A) and no shareholder **[in]** of 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]** of that unbundled company, more than 25 per cent of the equity shares of the unbundled company; or
- (B) and any shareholder **[in]** of 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]** of 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]** any 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]** any shareholder 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] which—**
 - (aa) if that shareholder is a resident, forms part of the same group of companies (as defined in section 1); or
 - (bb) if that shareholder is not a resident, is a controlled foreign company in relation to any resident that forms part of the same group of companies (as defined in section 1),as that unbundling company; **[and]**
- (ii) if, immediately before the distribution of the equity shares of an unbundled company by an unbundling company to any shareholder of that unbundling company as contemplated in subparagraph (i)[,]—
 - (aa) the unbundling company holds more than 50 per cent of the equity shares of the unbundled company;

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(bb) each of those equity shares of that unbundled company are held by the unbundling company as a capital asset;

(cc) where the unbundling company is a foreign company, that unbundling company is a controlled foreign company in relation to any resident that forms part of the same group of companies (as defined in section 1) as that unbundling company; and

(iii) if, immediately after the distribution of the equity shares of an unbundled company by an unbundling company as contemplated in subparagraph (i), more than 50 per cent of the equity shares of that unbundled company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident) where that unbundling company is a foreign company;”;

(b) 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, the distribution by that unbundling company of the shares must **[, for the purposes of the definition of ‘dividend’ and the definition of ‘return of capital’ in section 1, be deemed not to be an amount transferred by that unbundling company for the purposes of Part VIII of Chapter II]** be disregarded in determining any liability for dividends tax.”;

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

“(a) This section does not apply if, immediately after any distribution of shares in terms of an unbundling transaction, **[20] 10** per cent or more of the shares in the unbundled company are held by a disqualified person either alone or together with any connected person (who is a disqualified person) in relation to that disqualified person.”; and

(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 and 50 per cent of the shares of that controlled foreign company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident);”;

(2) Paragraphs (a) and (d) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of distributions made on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

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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, section 66 of Act 7 of 2010 and section 72 of Act 24 of 2011

85. (1) Section 47 of the Income Tax Act, 1962, is hereby amended—

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

“(a) in terms of which any company (hereinafter referred to as the ‘liquidating company’) which is a resident 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[—

(i) **is not—**

(bb) **a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;**

(cc) **a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section; or**

(dd) **a person contemplated in section 10(1) (cA), (cP), (d), (e) or (t); and**

(ii)] on the date of that disposal forms part of the same group of companies as the liquidating company; or

(b) in terms of which a liquidating company which is a foreign 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, if—

(i) those assets are so disposed of to a holding company which—

[(i)](aa) is a resident and which forms part of the same group of companies (as defined in section 1) 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] or**

[(ii)](bb) 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**];

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(ii) immediately before that distribution, each of the shares held by the holding company in the liquidating company is held as a capital asset; and

(iii) immediately after that transaction, where that holding company is a controlled foreign company as contemplated in subparagraph (i)(bb), more than 50 per cent of the equity shares in the holding company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident).”;

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

“: Provided that in the case of a liquidation distribution contemplated in paragraph (b) of the definition of ‘liquidation distribution’, this subsection does not apply to any asset disposed of to a holding company in terms of that liquidation distribution if that asset constitutes —

(a) a capital asset acquired by the holding company as a capital asset and the base cost of that asset exceeds the market value of that asset at the time of that disposal; or

(b) trading stock acquired by the holding company as trading stock and the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2) exceeds the market value of that asset at the time of that disposal”; and

(c) by the insertion in subsection (6) before paragraph (b) of the following paragraph:

“(a) the holding company is—

(i) a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;

(ii) a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section; or

(iii) a person contemplated in section 10(1)(cA), (cP), (d), (e) or (t);”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Insertion of Part IVA in Chapter II of Act 58 of 1962

86. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the insertion after section 48C of the following Part:

“PART IVA

Withholding tax on royalties

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Definitions

49A. In this Part—

‘foreign person’ means any person that is not a resident;

‘royalty’ means any amount that is received or accrues in respect of—

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

(b) 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.

Levy of withholding tax on royalties

49B. (1) 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 15 per cent of the amount of any royalty that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).

(2) For the purposes of this Part, a royalty is deemed to be paid on the earlier of the date on which the royalty is paid or becomes payable.

(3) The withholding tax on royalties is a final tax.

Liability for tax

49C. (1) A foreign person to which a royalty is paid is liable for the withholding tax on royalties to the extent that the royalty is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).

(2) Any amount of withholding tax on royalties that is—

(a) withheld as contemplated in section 49E(1); and

(b) paid as contemplated in section 49F(1),

is a payment made on behalf of the foreign person to which the royalty is paid in respect of that foreign person’s liability under subsection (1).

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Exemption from withholding tax on royalties

49D. A foreign person will be exempt from the withholding tax on royalties if that foreign person—

- (a) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the royalty is paid;
- (b) at any time during the twelve-month period preceding the date on which the royalty is paid carried on business through a permanent establishment in the Republic; or
- (c) is a controlled foreign company as defined in section 9D.

Withholding of withholding tax on royalties by payers of royalties

49E. (1) Subject to subsections (2) and (3), any person making payment of any royalty to or for the benefit of a foreign person must withhold an amount equal to 15 per cent of the amount of that royalty from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection (1) if the foreign person to or for the benefit of which that payment is to be made has—

- (a) by a date determined by the person making the payment; or
- (b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D, exempt from the withholding tax on royalties in respect of that payment.

(3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has—

- (a) by a date determined by the person making the payment; or
- (b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,

submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the royalty is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation.

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(4) Where a person making payment of a royalty to or for the benefit of a foreign person has withheld an amount as contemplated in subsection (1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

Payment and recovery of tax

49F. (1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on royalties in respect of any royalty that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person.

(2) Any person that withholds any withholding tax on royalties in terms of section 49E must pay the tax to the Commissioner by the last day of the month following the month during which the royalty is paid.

Refund of withholding tax on royalties

49G. Notwithstanding section 102, if—

(a) an amount is withheld from a payment of a royalty as contemplated in section 49E(1);

(b) a declaration contemplated in section 49E(2) or (3) in respect of that royalty is not submitted to the person paying that royalty by the date of the payment of that royalty; and

(c) a declaration contemplated in section 49E(2) or (3) is submitted to the Commissioner within three years after the payment of the royalty 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 by the Commissioner to the person to which the royalty was paid.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of—

(a) royalties that accrue; and

(b) royalties that are paid or that become payable,

on or after that date.

Amendment of section 49D of Act 58 of 1962, as inserted by section 85 of this Act

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87. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 49D of the following section:

“Exemption from withholding tax on royalties

49D. A foreign person will be exempt from the withholding tax on royalties in respect of any royalty if—

(a) that foreign person—

[(a)](i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the royalty is paid; or

[(b)](ii) at any time during the twelve-month period preceding the date on which the royalty is paid carried on business through a permanent establishment in the Republic; or

[(c) **is a controlled foreign company as defined in section 9D]**

(b) that royalty is paid—

(i) by a headquarter company; and

(ii) in respect of the granting of the use, right of use or permission to use intellectual property as defined in section 23I to which section 31 does not apply as a result of the exclusions contained in section 31(5)(c) or (d).”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of royalties that are paid or that become payable during years of assessment commencing on or after that date.

Amendment of section 64B of Act 58 of 1962 as inserted by section 20 of Act 95 of 1967 and amended by section 35 of Act 89 of 1969, section 20 of Act 52 of 1970, section 19 of Act 90 of 1972, section 41 of Act 85 of 1974, section 33 of Act 94 of 1983, section 7 of Act 108 of 1986, section 32 of Act 90 of 1988, section 34 of Act 113 of 1993, section 34 of Act 113 of 1993, section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 85 of Act 35 of 2007, section 32 of Act 3 of 2008, section 55 of Act 60 of 2008, section 51 of Act 17 of 2009 and section 68 of Act 7 of 2010

88. (1) Section 64B of the Income Tax Act, 1962, is hereby amended by the addition to subsection (4)(a) of the following proviso:

“: Provided that any dividend so declared by a company—

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- (i) before the effective date as defined in section 64D; and
- (ii) that will only accrue to shareholders in that company's share register on a date after that effective date,
must be deemed to have accrued to such shareholders on the day immediately before that effective date”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

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, section 69 of Act 7 of 2010 and section 74 of Act 24 of 2011

89. (1) Section 64C of the Income Tax Act, 1962, is hereby amended—

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

“(a) where the amount would have constituted a dividend as defined in section 1 without regard to paragraphs (i), (ii), (iii) and (iv) of that definition;”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

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, section 76 of Act 24 of 2011 and section 6 of Bill 10 of 2012

90. (1) Section 64E of the Income Tax Act, 1962, is hereby amended—

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

“(1) [There] Subject to paragraph 3 of the Tenth Schedule, there must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated at the rate of 15 per cent of the amount of any dividend paid by any company other than a headquarter company.”

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

“(2) For the purposes of this Part, a dividend is deemed to be paid—

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- (a) where the company that declared the dividend is a listed company, on the date on which the dividend is paid; or
- (b) where the company that declared the dividend is not a listed company, on the earlier of the date on which the dividend is paid or becomes payable [by the company that declared the dividend].”;
- (c) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:
“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]** by—”;
- (d) by the substitution in subsection (4)(a) for the words following subparagraph (ii) of the following words:
“in respect of a debt, that company must, for the purposes of this Part, be deemed to have paid a dividend if that **[loan or advance is provided by the company]** debt arises by virtue of any share held in that company by a person contemplated in subparagraph (i).”;
- (e) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
“(b) The amount of the dividend that is deemed to have been paid in terms of paragraph (a) must~~[,]~~—
(i) be deemed to consist of a distribution of an asset in specie; and
(ii) for the purposes of subsection (1), be deemed to be equal to the greater of—
 [(i)](aa) 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)](bb) nil.”;
- (f) by the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph:
“(i) the market-related interest in respect of that **[loan or advance]** debt, less the amount of interest that is payable to that company in respect of that **[loan or advance]** debt for that year of assessment; or”;
- (g) by the substitution in subsection (4) for paragraph (d) of the following paragraph:
“(d) For the purposes of this subsection, ‘**market-related interest**’, in relation to any **[loan or advance provided by]** debt owed to 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]** debt for a period during a year of assessment if the **[loan or advance]** debt had been **[provided]** owed for that period at the official rate of interest as defined in paragraph (1) of the Seventh Schedule.”;
- (h) by the addition to subsection (4) of the following paragraph:

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“(e) This subsection does not apply to the extent that the amount owing to a company in respect of a loan or advance contemplated in paragraph (a) was deemed to be a dividend that was subject to the secondary tax on companies.”; and

(i) by the substitution in subsection (4) for paragraph (e) of the following paragraph:

“(e) This subsection does not apply to the extent that the amount owing to a company in respect of a [loan or advance] debt contemplated in paragraph (a) was deemed to be a dividend that was subject to the secondary tax on companies.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.

(3) Paragraphs (b) and (e) of subsection (1) are deemed to have come into operation on 1 April 2012.

(4) Paragraphs (c), (d), (f), (g) and (i) of subsection (1) come into operation on 1 January 2013.

(5) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 April 2012.

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 and section 78 of Act 24 of 2011

91. (1) Section 64F of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the full-stop at the end of paragraph (j) of the expression “; or”;

(b) by the addition of the following paragraphs:

“(k) a portfolio of a collective investment scheme in securities;

(l) any person to the extent that the dividend is not exempt from normal tax; or

(m) any person to the extent that the dividend was subject to the secondary tax on companies.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 64FA of Act 58 of 1962, as inserted by section 79 of Act 24 of 2011

92. (1) Section 64FA 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 (b);

(b) by the substitution in subsection (1) for the full-stop at the end of after paragraph (c) of the expression “; or”; and

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

“(d) a natural person that holds a share in a share block company, as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), paying that dividend if the dividend constitutes a disposal as contemplated in paragraph 67B(1) of the Eighth Schedule.”.

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(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of dividends paid on or after that date.

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 and section 80 of Act 24 of 2011

93. (1) Section 64G of the Income Tax Act, 1962, is hereby amended—

(a) 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, to the extent that the dividend does not consist of a distribution of an asset *in specie*, must withhold dividends tax from that payment at a rate of [10] 15 per cent of the amount of that dividend.”; and

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

“(4) Where a company that makes payment of a dividend to any person withholds an amount of dividends tax from that payment in terms of subsection (1), that company must, for the purposes of this Part, be deemed to have paid the amount so withheld to that person.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

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 and section 81 of Act 24 of 2011

94. (1) Section 64H of the Income Tax Act, 1962, is hereby amended—

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

“(1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend, to the extent that the dividend does not consist 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] 15 per cent of the amount of that dividend.”;

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

“(aa) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F or that the payment is made to a vesting trust of which the sole beneficiary is another regulated intermediary; and”;

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

“(4) Where a regulated intermediary that makes payment of a dividend to any person withholds an amount of dividends tax from that payment in terms of subsection (1), that

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company must, for the purposes of this Part, be deemed to have paid the amount so withheld to that person.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 64J of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 83 of Act 24 of 2011

95. (1) Section 64J of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) the company has **[by]** 21 business days after the date of payment notified the person to whom the dividend is paid of the amount by which the dividend reduces the STC credit of the company.”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- (a) the amount by which the dividends accrued to that company as contemplated in section 64B(2) during the dividend cycle ending on the day immediately before the effective date **[and the dividends which are deemed in terms of section 64B to have accrued to that company during that dividend cycle]**, determined without regard to any dividend contemplated in section 64B(3A), exceed the dividends declared on that day by that company as contemplated in section 64B(2); and
- (c) 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 a **[written]** notice to the company prior to paying the dividend of the amount by which the dividend reduces the STC credit of the company paying the dividend,”;
- (d) by the substitution in subsection (2) for the words following paragraph (b) of the following words:
- “reduced by the dividends declared and paid by the company **[to the extent that the dividends are paid by the company]** on or after the effective date.”; and
- (e) by the substitution for subsection (5) of the following subsection:
- “(5) The STC credit of a company **[or person]** on or after the **[fifth]** third anniversary of the effective date is deemed to be nil.”; and
- (f) by the addition of the following subsection:
- “(6) For the purposes of this section ‘dividend’ means a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D(1).”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

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Amendment of section 64L of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

96. (1) Section 64L of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) **[a]** both the declaration and the written undertaking contemplated in section 64G(2)(a) or (3) **[is]** are submitted to the company within three years after the payment of the dividend in respect of which **[it is]** they are made.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 64M of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009

97. (1) Section 64M of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) **[a]** both the declaration and the written undertaking contemplated in section 64H(2)(a) or (3) **[is]** are submitted to the regulated intermediary within three years after the payment of the dividend in respect of which **[it is]** they are made.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 72A of Act 58 of 1962, as substituted by section 65 of Act 45 of 2003 and amended by section 11 of Act 32 of 2005 and section 13 of Act 4 of 2008

98. (1) Section 72A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A resident must have available for submission to the Commissioner when so requested, a copy of the financial statements of the controlled foreign company for the relevant foreign tax year **[, as defined in section 9D,]** of that controlled foreign company.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of foreign tax years ending during years of assessment commencing on or after that date.

Amendment of section 80N of Act 58 of 1962, as inserted by section 6 of Act 21 of 2006

99. (1) Section 80N of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words:

“a **[loan, advance or]** debt in terms of which—”.

(2) Subsection (1) comes into operation on 1 January 2013.

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

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

- (a) by the deletion of the definition of “formula C”;
- (b) by the substitution in the definition of “lump sum benefit” for the words after paragraph (b) of the following words:

“whether in one amount or in instalments, **[other than]** but does not include any amount deemed to be income accrued to a person in terms of section 7(11);”;

- (c) by the substitution for the definition of “pension fund” of the following definition:

“ ‘**pension fund**’, in relation to any **[taxpayer]** person, means—

- (a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund under paragraph (c) of the definition of ‘pension fund’ in section 1 or a corresponding definition in any previous Income Tax Act; or

- (b) a public sector fund **[referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 this Act]** (other than a fund referred to in paragraph (b) of the definition of ‘provident fund’), the rules of which wholly or mainly provide for annuities on retirement to its members, if during any such year the **[taxpayer]** person was a member of such fund;”;

- (d) by the substitution for the definition of “provident fund” of the following definition:

“ ‘**provident fund**’, in relation to any **[taxpayer]** person, means—

- (a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section **[one]** 1 of this Act or the corresponding provisions of any previous Income Tax Act; or

- (b) a public sector fund **[referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1]**, the rules of which provide for benefits in a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities) to its members on retirement, if during any such year the **[taxpayer]** person was a member of such fund;”;

- (e) by the insertion after the definition of “provident fund” of the following definition:

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“**‘public sector fund’** means a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1.”;

(f) by the substitution for the definition of “retire” of the following definition:

“**‘retire’**, in relation to a person who is 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 or lump sum benefit contemplated in the definition of ‘retirement date’;”; and

(g) by the substitution for the definition of “retirement annuity fund” of the following definition:

“**‘retirement annuity fund’** in relation to any [**taxpayer**] person, means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a retirement annuity fund as defined in section [**one**] 1 of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the [**taxpayer**] person was a member of such fund.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts payable on or after that date.

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

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

(a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“Subject to the provisions of section 9[(1)(g)](2)(i) and paragraphs 2A, 2B and 2C, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 shall be—”

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

“Subject to [**the provisions of**] section 9(2)(i) and paragraphs 2A[, **2B**] and 2C, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 shall be—”;

(c) by the substitution in subparagraph (1)(b) for subitem (iA) of the following subitem:

“(iA) assigned in terms of a divorce order granted on or after 13 September 2007 under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), to the extent that the amount so assigned [**is deducted from the minimum individual reserve of that person’s former spouse in terms of section 37D(1)(d)(i) of the Pension**

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Funds Act, 1956 (Act No. 24 of 1956), or is so deducted in terms of section 37D(1)(d)(ii) of that Act as a result of the deduction contemplated in section 37D(1)(d)(i) of that Act;]—

(aa) constitutes a part of a pension interest, as defined in section 1 of the Divorce Act, 1979 (Act No. 70 of 1979), of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and

(bb) becomes payable on or after 1 March 2012 to a person who is the former spouse of that member by that pension fund, pension preservation fund, provident fund or provident preservation fund or retirement annuity fund;”;
and

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

“(a) in the case of an amount contemplated in subparagraph (1)(b)(iA), on the date on which [an election is made as contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or on the date on which the amount is paid in terms of section 37D(4)(b)(iv) of that Act] the amount becomes payable as contemplated in subparagraph (1)(b)(iA)(bb); and”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of premiums incurred during years of assessment commencing on or after that date.

(3) Paragraphs (b), (c) and (d) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts payable on or after that date.

Substitution of paragraph 2A of Second Schedule to Act 58 of 1962

102. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2A of the following paragraph:

“2A. Where any lump sum benefit is received or accrues from a public sector fund, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 shall be deemed to be an amount equal to the amount determined in accordance with the following formula:

$$A = \frac{B \times D}{C}$$

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in which formula—

(a) ‘A’ represents the amount which has to be determined:

(b) ‘B’ represents—

(i) where the number of completed years of employment of a person who is or was a member of a fund are in terms of the rules of that fund taken into account for the purpose of determining the amount of a benefit payable by the fund, the number of completed years of employment of the member after 1 March 1998, including previous or other periods of service approved as pensionable service in terms of the rules of any fund after 1 March 1998, other than completed years of employment representing—

(aa) any benefit of a person who is a member of any public sector fund, which is after 1 March 1998 paid for the benefit of any person into another public sector fund in respect of any previous or other periods of service or membership accounted for prior to 1 March 1998 in terms of the rules of any public sector fund; or

(bb) years of pensionable service recognised as such in terms of Rule 10.5 or 10.6 of the Rules of the Government Employees Pension Fund, contained in Schedule 1 to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), to the extent that those years are not taken into account under item (aa); or

(ii) where the number of completed years of employment are not taken into account as contemplated in subitem (i), the number of completed years after 1 March 1998 during which the member had, until the date of accrual of any benefit, been a member of any public sector fund or funds;

(c) ‘C’ represents—

(i) where the number of completed years of employment of a person who is or was a member of a fund are in terms of the rules of that fund taken into account for the purpose of determining the amount of the benefits payable to any person by the fund, the total number of completed years of employment so taken into account; or

(ii) where the number of completed years of employment are not taken into account as contemplated in subitem (i), the number of completed years during which the member had, until the date of accrual of any benefit, continuously been a member of any public sector fund or funds;

(d) ‘D’ represents the lump sum benefit payable to the person.”.

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(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts payable on or after that date.

Repeal of paragraph 2B of Second Schedule to Act 58 of 1962

103. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 2B.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012.

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

104. (1) Paragraph 3 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words after subparagraph (b) and before the proviso of the following words:

“in consequence of or following upon the death of a person who is or was a member [or past member] of that fund must, on the date of payment of that lump sum benefit, be deemed to have accrued to that [member or past member] person immediately prior to the death of that [member or past member] person”; and

(b) by the substitution in the proviso for paragraphs (ii) and (iii) of the following paragraphs:

“(ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a person who is or was 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] person;

(iii) where any such lump sum benefit becomes payable but the dependants or nominees of that [member or past member] person elect an annuity (including a living annuity) 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; and”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts payable on or after that date.

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Amendment of paragraph 3A of Second Schedule to Act 58 of 1962, as inserted by section 82 of Act 7 of 2010

105. (1) Paragraph 3A of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words after subparagraph (b) and before the proviso of the following words:

“in consequence of or following upon the death of any person other than a person who is or was a member [or past member] of that fund shall, on the date of payment of that lump sum benefit, be deemed to have accrued to **[that]** the deceased person immediately prior to the death of that person”; and

(b) by the substitution in the proviso for paragraph (ii) of the following paragraph:

“(ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a person other than a person who was 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 deceased person;”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts payable on or after that date.

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, section 83 of Act 7 of 2010 and section 91 of Act 24 of 2011

106. (1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) 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 a person who is a member of such fund on the earliest of the date—”;

(b) by the substitution for subparagraph (2)*bis* of the following subparagraph:

“(2)*bis* If a policy of insurance is ceded or otherwise made over to or in favour of a person who is a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund by **[the]** that fund **[in question]** on

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or after the date of commencement of the Income Tax Act, 1964, the surrender value of such policy shall, provided such **[member] person** retired or ceased to be a member of such fund on or after the fifteenth day of March, 1961, be deemed for the purposes of this Schedule to be a lump sum benefit accruing to such **[member] person** from such fund on the date of such cession or making over.”; and

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

“(3) If a person who is a member of a provident fund retires from such fund before he or she reaches the age of 55 years on grounds other than ill-health, any lump sum benefits received by or accrued to such **[member] person** in consequence of or following upon such retirement shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such **[member] person** in consequence of or following upon such **[member’s] person’s** withdrawal or resignation from such fund.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts payable on or after that date.

Amendment of paragraph 5 of Second Schedule to Act 58 of 1962, as substituted by section 61 of Act 17 of 2009

107. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended—

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

“BENEFITS ACCRUING UPON RETIREMENT AND BENEFITS DEEMED TO HAVE ACCRUED IMMEDIATELY PRIOR TO **[THE TAXPAYER’S] PERSON’S** DEATH: DEDUCTIONS”

(b) by the substitution for subparagraph (1) of the following subparagraph:

“(1) The deduction to be allowed for the purposes of paragraph 2(1)(a) is an amount equal to so much of—

(a) the **[taxpayer’s] person’s** own contributions that did not rank for a deduction against the **[taxpayer’s] person’s** income in terms of section 11(k) or (n) to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member;

(b) any amount transferred for the benefit of the **[taxpayer] person** to any pension fund, pension preservation fund, provident fund, provident preservation fund or

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retirement annuity fund as a result of an election made in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

- (c) any amount that is deemed to have accrued to the **[taxpayer] person** as contemplated in paragraph 2(2)(b);
- (d) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and
- (e) any other amounts in respect of which **[formula C]** the formula in paragraph 2A applies, which have been paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the **[taxpayer's] person's** benefit by a **[pension] public sector fund [contemplated in paragraph (a) or (b) of the definition of 'pension fund' in section 1]**, less the amount represented by symbol A when so applying that formula, as has not previously been allowed to the **[taxpayer] person** as a deduction in terms of this Schedule in determining the amount to be included in that **[taxpayer's] person's** gross income.”;

- (c) by the substitution for the words in subparagraph (1) after item (e) of the following words:

“as has not been exempted in terms of section 10C or has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining the amount to be included in that taxpayer's gross income.”; and

- (d) by the substitution for subparagraph (3) of the following subparagraph:

“(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the **[taxpayer] person** by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the **[taxpayer] person** to any other such fund, or any amount paid by the **[taxpayer] person** into the latter fund in lieu of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the **[taxpayer] person**.”.

(2) Paragraphs (a), (b) and (d) of subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts payable on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.

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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 and section 92 of Act 24 of 2011

108. (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 the words preceding subsubitem (aa) of the following words:

“a lump sum benefit contemplated in paragraph 2(1)(b)(iA), so much of the benefit as is paid or transferred for the benefit of the **[taxpayer] person** from a—”;

(b) by the substitution in subparagraph (1)(a)(ii) for the words preceding subsubitem (aa) of the following words:

“a lump sum benefit contemplated in paragraph 2(1)(b)(iB), so much of the benefit as is paid or transferred for the benefit of the **[taxpayer] person** from a—”;

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

“in any other case, so much of the aggregate of—

- (i) the **[taxpayer’s] person’s** own contributions that did not rank for a deduction against the **[taxpayer’s] person’s** income in terms of section 11(k) or (n) to any pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds of which he or she is or previously was a member;
- (ii) any amount transferred for the benefit of the **[taxpayer] person** to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made as contemplated in section 37D(4)(b)(ii)(cc) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (iii) any amount that is deemed to have accrued to the **[taxpayer] person** as contemplated in paragraph 2(1)(b)(iB);
- (iv) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and
- (v) any other amounts in respect of which **[formula C]** the formula in paragraph 2A applies, which have been paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the **[taxpayer’s] person’s** benefit by a **[pension] public sector fund [contemplated in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1]**, less the amount represented by symbol A when applying that formula,

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as has not previously been allowed to the **[taxpayer] person** as a deduction in terms of this Schedule in determining any amount to be included in that **[taxpayer's] person's** gross income.”;

(d) by the substitution in subparagraph (1)(b) for the words after subitem (v) of the following words:

“as has not been exempted in terms of section 10C or has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining any amount to be included in that taxpayer's gross income.”; and

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

“(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the taxpayer by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the **[taxpayer] person** to any other such fund, or any amount paid by the **[taxpayer] person** into the latter fund *in lieu* of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the **[taxpayer] person**.”.

(2) Paragraphs (a), (b), (c) and (e) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts payable on or after that date.

(3) Paragraph (d) of subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.

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, section 64 of Act 17 of 2009 and section 102 of Act 24 of 2011

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

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

“(f) a loan (other than a loan for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, 1973 (Act No. 61 of 1973), or the payment of any stamp duties or **[uncertificated]** securities transfer tax payable in respect of that share, or a loan in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been granted to the employee, whether by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer, and either no interest is payable by the employee

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on such loan or interest is payable by him thereon at a rate of lower than the official rate of interest; or”;

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

“(f) a loan (other than a loan for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), or the payment of any stamp duties or securities transfer tax payable in respect of that share, or a loan in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been granted to the employee, whether by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer, and either no interest is payable by the employee on such loan or interest is payable by him thereon at a rate of lower than the official rate of interest; or”;

(c) by the substitution for subparagraphs (f), (g), (gA) and (h) of the following subparagraphs:

“(f) a **[loan] debt** (other than a **[loan] debt** for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, 2008 (Act No. 71 of 2008), or the payment of any stamp duties or securities transfer tax payable in respect of that share, or a **[loan] debt** in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been **[granted to] incurred by** the employee, whether **[by] in favour of** the employer or **[by] in favour of** any other person by arrangement with the employer or any associated institution in relation to the employer, and either—

(i) no interest is payable by the employee **[on] in respect of** such **[loan] debt**; or

(ii) interest is payable by **[him thereon] the employee in respect thereof** at a rate of lower than the official rate of interest; or

(g) the employer has paid any subsidy in respect of the amount of interest or capital repayments payable by the employee in terms of any **[loan] debt**; or

(gA) the employer has, in respect of any **[loan granted to] debt owed by** the employee **[by] to** any lender, paid to such lender any subsidy, being an amount which, together with any interest payable by the employee **[on such loan] in respect of that debt**, exceeds the amount of the interest which, if calculated at the official rate of interest, would have been payable **[on such loan] in respect of that debt**; or

(h) the employer has, whether directly or indirectly, paid any **[amount] debt** owing by the employee to any third person (other than an amount in respect of which item (i) or (j) applies), without requiring the employee to reimburse the employer for the amount paid

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or the employer has released the employee from an obligation to pay any **[amount]** debt owing by the employee to the employer: Provided that where any debt owing by the employee to the employer has been extinguished by prescription the employer shall be deemed to have released the employee from his or her obligation to pay the amount of such debt if the employer could have recovered the **[amount]** debt owing or caused the running of the prescription to be interrupted, unless it is shown to the satisfaction of the Commissioner that the employer's failure to recover the **[amount]** debt owing or to cause the running of the prescription to be interrupted was not due to any intention of the employer to confer a benefit on the employee; or”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 July 2008.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2011.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2013.

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 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice 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, section 91 of Act 7 of 2010 and section 103 of Act 24 of 2011

110. (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(b) for subitems (i) and (ii) of the following subitems:

“(i) is held by the employer under a lease (other than an ‘operating lease’ as defined in section 23A(1)); or

(ii) was held by the employer under a lease (other than an ‘operating lease’ as defined in section 23A(1)) and the ownership thereof was acquired by **[him]** the employer on the termination of the lease,”;

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

“(a) where an employee has been granted the right of use of such motor vehicle as contemplated in subparagraph (2) (other than a motor vehicle acquired under an operating lease as defined in section 23A(1)) and such vehicle, or the right of use thereof, was acquired by the employer not less than 12 months before the date on which the employee was granted such right of use, there shall be deducted from the amount

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determined under the foregoing provisions of this subparagraph a depreciation allowance calculated according to the reducing balance method at the rate of 15 per cent for each completed period of 12 months from the date on which the employer first obtained such vehicle or the right of use thereof to the date on which the said employee was first granted the right of use thereof; and”;

(c) by the substitution in subparagraph (4) for items (a) and (b) of the following items:

“(a) as respects each such month[,]=

(i) be an amount equal to 3,5 per cent of the determined value of such motor vehicle:

Provided that where the motor vehicle is the subject of a maintenance plan at the time the employer acquired the motor vehicle or the right of use thereof, that amount shall be reduced to an amount equal to 3,25 per cent of the determined value of the motor vehicle; or

(ii) where such vehicle is acquired by the employer under an ‘operating lease’ as defined in section 23A(1) concluded by independent parties transacting at arm’s length, be the actual cost to the employer incurred under that operating lease; and

(b) as respects any such part of a month, be an amount which bears to the appropriate amount determined in accordance with item (a)(i) or (ii) for a month the same ratio as the number of days in such part of a month bears to the number of days in the month in which such part falls.”;

(d) by the substitution in subparagraph (8) for the words preceding item (a) of the following words:

“Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for private purposes in such vehicle (other than a vehicle acquired as contemplated in subparagraph (4)(a)(ii)) are kept and the employee bears—”.

(2) Subsection (1) comes into operation on 1 March 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 12C of Seventh Schedule to Act 58 of 1962, as inserted by section 106 of Act 24 of 2011

111. (1) Paragraph 12C of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (3) of the following subparagraph:

“(4) If the apportionment of the contribution or payment amongst all employees does not reasonably represent a fair apportionment of that contribution or payment amongst the employees, the apportionment may be made in such other manner as is fair and reasonable.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of premiums incurred on or after that date..

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Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as amended by section 65 of Act 60 of 2001, section 63 of Act 74 of 2002, section 90 of Act 45 of 2003, section 25 of Act 16 of 2004, section 51 of Act 32 of 2004, section 63 of Act 31 of 2005 and section 49 of Act 3 of 2008

112. (1) Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “value shifting arrangement” of the following definition—

“ ‘**value shifting arrangement**’ means an arrangement by which a person retains an interest in a [company,] trust or partnership, but following a change in the rights or entitlements of the interests in that [company,] trust or partnership (other than as a result of a disposal at market value as determined before the application of paragraph 38), the market value of the interest of that person decreases and—

- (a) the value of the interest of a connected person in relation to that person held directly or indirectly in that [company,] trust or partnership increases; or
- (b) a connected person in relation to that person acquires a direct or indirect interest in that [company,] trust or partnership.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

Amendment of paragraph 3 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 67 of Act 60 of 2001 and section 52 of Act 32 of 2004

113. (1) Paragraph 3 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (b) for item (ii) of the following item—

“(ii) so much of the base cost of that asset that has been taken into account in determining the capital gain or capital loss in respect of that disposal as has been recovered or recouped during the current year of assessment, otherwise than by way of any reduction of any debt owed by that person, and which has not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 8 of Eighth Schedule to Act 58 of 1962, as substituted by section 65 of Act 31 of 2005

114. (1) Paragraph 8 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

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“(b) where paragraph 64B(3) becomes applicable during that year of assessment, the amount of the capital gain which was disregarded in terms of paragraph 64B(2) or (2A) during that year or any previous year, as contemplated in paragraph 64B(3).”; and

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

“(b) where paragraph 64B(3) becomes applicable during that year of assessment, the amount of the capital gain which was disregarded in terms of paragraph 64B[(2)](1) or [(2A)](2) during that year or any previous year, as contemplated in paragraph 64B(3).”; and

(2) Paragraph (a) of subsection (1) is deemed to have come 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 January 2013 and applies in respect of disposals made on or after that date.

Amendment of paragraph 10 of Eighth Schedule to Act 58 of 1962, as amended by section 66 of Act 74 of 2002 and section 9 of Act xx of 2012

115. (1) Paragraph 10 of the Eighth 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 an insurer, in respect of its—
(i) individual policyholder fund, [25] 33,3 per cent; [and]
(ii) untaxed policyholder fund, 0 per cent; and
(iii) company policyholder fund, 66,6 per cent; or”.

(2) Subsection (1) is—

- (a) in respect of deemed disposals made by virtue of section 29B of the Income Tax Act, 1962, deemed to have come into operation on that date and applies in respect of those disposals; and
- (b) in respect of any disposals other than deemed disposals contemplated in paragraph (a), deemed to have come into operation on 1 March 2012 and applies in respect of those disposals that are made on or after that date.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005, section 44 of Act 20 of 2006 and section 74 of Act 60 of 2008

116. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended

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

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“(g) the decrease in value of a person’s interest in a [company,] trust or partnership as a result of a value shifting arrangement.”; and

(b) by the substitution in subparagraph (2) for item (b) of the following item:

“(b) by a company in respect of—

(i) the issue or cancellation of a share or member’s interest in the company[, or by a company in respect of]; or

(ii) the granting of an option to acquire a share[, or member’s interest in or [debenture in] certificate acknowledging or creating a debt owed by that company;”; and

(c) by the substitution in subparagraph (2) for item (d) of the following item:

“(d) by a person in respect of the issue of any [bond, debenture, note or other borrowing of money or obtaining of credit from another] debt by or to that person;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2013.

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, section 94 of Act 7 of 2010 and section 108 of Act 24 of 2011

117. (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 to be a resident or a [controlled foreign] person that is a company that commences or ceases to be a [resident] controlled foreign company, in respect of all assets of that person other than—”;

(b) by the substitution in subparagraph (2)(a) for the words preceding subitem (i) of the following words:

“a person that commences to be a resident or a person that is a foreign company that commences [or ceases] to be a controlled foreign company, in respect of all assets of that person other than—”; and

(c) by the deletion of subparagraph (5).

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of disposals made on or after that date.

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(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 8 May 2012 and applies in respect of disposals made on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

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

118. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion of the following paragraph after paragraph 12:

“Reduction or cancellation of debt

12A. (1) For the purposes of this section, ‘reduction amount’, in relation to a debt owed by a person, means any amount by which that debt is reduced less any amount applied by that person as consideration for that reduction.

(2) Subject to subparagraph (5), this paragraph applies where a debt that is owed by a person is reduced by any amount and—

(a) the amount of that debt was used, directly or indirectly, to fund any expenditure other than expenditure in respect of which a deduction or allowance was granted in terms of this Act;

(b) the amount of that reduction exceeds any amount applied by that person as consideration for that reduction.

(3) Where—

(a) a debt owed by a person is reduced as contemplated in subparagraph (2); and

(b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund expenditure incurred in the acquisition, creation or improvement of an asset that is held by that person at the time of the reduction of the debt,

the reduction amount in respect of that debt must be applied to reduce the base cost of that asset: Provided that this subparagraph may only be applied to reduce the base cost of an asset to the extent of that base cost.

(4) Where—

(a) a debt owed by a person is reduced as contemplated in subparagraph (2); and

(b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund—

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(i) expenditure incurred in the acquisition, creation or improvement of an asset that is held by that person at the time of the reduction of the debt, and subparagraph (3) has been applied to reduce the base cost of that asset to the full extent of that base cost; or

(ii) expenditure other than expenditure incurred in the acquisition, creation or improvement of an asset that is held by that person at the time of the reduction of that debt,

the reduction amount in respect of that debt must be applied to reduce any aggregate capital loss of that person for the year of assessment in which the reduction takes place: Provided that this subparagraph may only be applied to reduce an aggregate capital loss to the extent of that aggregate capital loss.

(5) This paragraph must not apply—

(a) to any debt owed by a person—

(i) that is an heir or legatee of a deceased estate, to the extent that the debt is owed to that deceased estate and is reduced by the deceased estate;

(ii) to the extent that the debt is reduced by way of a gratuitous waiver or renunciation of any right by the person to whom the debt is owed; or

(iii) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule;

(iv) to another person where that person and that other person are companies that form part of the same group of companies as defined in section 41, unless, as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act—

(aa) that debt (or any debt issued in substitution for that debt) was acquired directly or indirectly from a person who does not form part of that group of companies; or

(bb) that company or that other company became part of that group of companies after that debt (or any debt issued in substitution for that debt) arose; or

(v) that is a company, where—

(aa) that debt is reduced in the course, or in anticipation, of the liquidation, winding up, deregistration or final termination of the existence of that company; and

(bb) the person to whom the debt is owed is a connected person in relation to that company,

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to the extent that reduction amount in respect of that debt does not, at the time that the debt is reduced, exceed the amount of expenditure contemplated in paragraph 20 incurred in respect of that debt by the connected person: Provided that this subitem must not apply—

(A) if—

(AA) the debt was reduced as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act; and

(BB) that company became a connected person in relation to the person to whom the debt is owed after the debt (or any debt issued in substitution of that debt) arose; or

(B) if that company—

(AA) has not, within 18 months of the date on which the debt is reduced or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to liquidate, wind up, deregister or finally terminate its existence;

(BB) has at any stage withdrawn any step taken to liquidate, wind up deregister or finally terminate its corporate existence; or

(CC) does anything to invalidate any step contemplated in subparagraph (AA), with the result that the company is or will not be liquidated, wound up, deregistered or finally terminate its existence; or

(b) to any reduction amount in respect of any debt owed by a person to the extent that that reduction amount reduced in terms of section 19 or taken into account in terms of section 8(4)(a).

(6) Any tax which becomes payable as a result of the application of paragraph (B) of the proviso to subparagraph (5)(a)(v) must be recovered from the company and the connected person contemplated in that subparagraph who must be jointly and severally liable for that tax.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as amended by section 69 of Act 74 of 2002, section 57 of Act 32 of 2004, section 51 of Act 3 of 2008, section 76 of Act 60 of 2008 and section 68 of Act 17 of 2009

119. (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

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“(f) the decrease of a person’s interest in a [company,] trust or partnership as a result of a value shifting arrangement, is the date on which the value of that person’s interest decreases; or”; and

(b) by the substitution in subparagraph (1)(g) for subitem (ii) of the following subitem:

“(ii) paragraph 12(2)(f) [or 12(5)], is the date that that event occurs.”

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

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, section 95 of Act 7 of 2010 and section 110 of Act 24 of 2011

120. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for item (c) of the following item:

“(c) is exempt from tax in terms of section [10(1)(y) or (yA)] 10(1)(yA) and is granted or paid for purposes of the acquisition of that asset.”

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 23 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 27 of Act 19 of 2001

121. (1) Paragraph 23 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in item (b) for subitem (ii) of the following subitem:

“(ii) who acquires a direct or indirect interest in the [company,] trust or partnership, is that proportion of the proceeds of disposal contemplated in paragraph 35(2) in respect of the value shifting arrangement which resulted in the acquisition of that interest.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 28 of Act 19 of 2001, section 84 of Act 60 of 2001, section 39 of Act 30 of 2002 and section 79 of Act 74 of 2002

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122. (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3) for the words preceding item (a) of the following words:

“Subject to **[subparagraph]** subparagraphs (3A) and (3B), the base cost of identical assets must be determined by using one of the following methods—”;

(b) by the substitution in subparagraph (3A) for the words preceding item (a) of the following words:

“**[Despite the provisions of subparagraph (3), the]** The weighted average method of determining base cost of assets, as contemplated in subparagraph (4), may be used for identical assets that do not constitute assets contemplated in subparagraph (3B) and which—”

(c) by the insertion after subsection (3A) of the following subsection:

“(3B) The weighted average method of determining base cost of assets, as contemplated in subparagraph (4), must be used for identical assets that are, in terms of section 29A, allocated to the company policyholder fund and individual policyholder fund of an insurer as defined in that section.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made during years of assessment commencing on or after that date.

Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001, section 81 of Act 74 of 2002 and section 63 of Act 32 of 2004

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

“Subject to subparagraph (2) and **[paragraphs 12(5) and]** paragraph 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm’s length price—”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 40 of Eighth Schedule to Act 58 of 1962, as amended by section 89 of Act 60 of 2001, section 82 of Act 74 of 2002, section 50 of Act 20 of 2006, section 54 of Act 3 of 2008, section 79 of Act 60 of 2008 and section 71 of Act 17 of 2009

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

“**[Subject to paragraph 12(5), where]** Where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(a))—”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962, as amended by section 90 of Act 60 of 2001, section 74 of Act 31 of 2005, section 74 of Act 35 of 2007, section 55 of Act 3 of 2008 and section 99 of Act 7 of 2010

125. (1) Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding item (a) of the following words:

“Where a capital loss is determined in respect of the disposal by a person of a financial instrument, other than a disposal contemplated in section 29B, and within a period beginning 45 days before the date of disposal and ending 45 days after that date, that person or a connected person in relation to that person, subject to subparagraph (3), acquires or has entered into a contract to acquire a financial instrument of the same kind and of the same or equivalent quality—”.

(2) Subsection (1) is deemed to have come into operation on 29 February 2012 and applies in respect of disposals made on or after that date.

Amendment of paragraph 42A of Eighth Schedule to Act 58 of 1962

126. (1) Paragraph 42A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding subparagraph (a) of the following words:

“If a capital gain is determined in respect of the disposal by a person of a listed share in terms of an arrangement between a company and its shareholders, or any class of them, which has been sanctioned by the court in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973) or in terms of section 114 of the Companies Act, 2008 (Act No. 71 of 2008), and within a period of 90 days after the disposal that person acquires a share of the same kind and of the same or equivalent quality (hereinafter referred to as the “replacement share”)—”.

(2) Subsection (1) is deemed to have come into operation on 1 May 2011 and applies in respect of disposals made on or after that date.

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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, section 100 of Act 7 of 2010 and section 111 of Act 24 of 2011

127. (1) Paragraph 43 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 subparagraph (4), where, during any year of assessment, a person [**during any year of assessment**] that is a natural person or a trust that is not carrying on a trade disposes of an asset for proceeds in a currency other than the currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that currency and that capital gain or capital loss must be translated to the currency of the Republic by applying the average exchange rate for the year of assessment in which that asset was disposed of or by applying the spot rate on the date of disposal of that asset.”;

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

“(1A) Subject to subparagraph (4), where, during any year of assessment, a person that is a company or a trust carrying on a trade disposes of an asset for proceeds in a currency other than the currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must, for the purposes of determining the capital gain or capital loss on the disposal of that asset, translate—

(a) the proceeds into the currency of the Republic at the average exchange rate for the year of assessment in which that asset was disposed of or at the spot rate on the date of disposal of that asset; and

(b) the expenditure incurred in respect of that asset into the currency of the Republic at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate on the date on which that expenditure was incurred.”;

(c) 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 from a source in the Republic.”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2013 and apply in respect of disposals made on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2013.

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Amendment of paragraph 43A of Eighth Schedule to Act 58 of 1962, as substituted by section 112 of Act 24 of 2011

128. (1) Paragraph 43A of the Income Tax Act, 1962, is hereby amended

(a) by the substitution for subparagraphs (2) and (3) of the following subparagraphs:

“(2) 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 exempt dividend received by or accrued to that taxpayer in respect of any share held by the taxpayer in that other company—

(a) to the extent that the exempt 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.

(3) For the purposes of subparagraph (2), 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.”;

(b) by the substitution in subparagraph (2)(c) for the words preceding subitem (i) of the following words:

“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—”; and

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

“(3) For the purposes of subparagraph (2), 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.”.

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(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2013.

Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, substituted by section 99 of Act 60 of 2001 and amended by section 88 of Act 74 of 2002 and section 65 of Act 32 of 2004

129. (1) Paragraph 56 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 creditor disposes of a **[claim] debt** owed by a debtor, who is a connected person in relation to that creditor, that creditor must disregard any capital loss determined in consequence of that disposal.”;

(b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“Despite paragraph 39, subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a **[claim] debt** owed by a debtor, to the extent that the amount of that **[claim] debt** so disposed of represents—”;

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

“(a) an amount which is applied to reduce—

(i) the base cost of an asset of the debtor in terms of paragraph 12A(3); or

(ii) any aggregate capital loss of the debtor in terms of paragraph 12A(4);”;

(d) by the substitution in subparagraph (2) for item (b) of the following item:

“(b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that **[claim] debt**;”;

(e) by the substitution in subparagraph (2) for item (c) of the following item:

“(c) an amount that must be or was included in the gross income or income of the debtor or **[taken into account in the determination of] applied to reduce** the balance of assessed loss of the debtor in terms of section **[20(1)(a)(ii)] 19**; or”;

(f) by the substitution in subparagraph (2) for item (d) of the following item:

“(d) a capital gain which the creditor proves must be or was included in the determination of the aggregate capital gain or aggregate capital loss of any acquirer of the **[claim] debt**.”.

(2) Paragraphs (a), (b), (d) and (f) of subsection (1) come into operation on 1 January 2013.

(3) Paragraphs (c) and (e) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

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Amendment of paragraph 61 of Eighth Schedule to Act 58 of 1962, as substituted by section 75 of Act 17 of 2009 and amended by section 106 of Act 7 of 2010

130. (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion of the following subparagraph after subparagraph (2):

“(3) Any capital gain or loss in respect of a disposal by a portfolio of a collective investment scheme must be disregarded.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 64A of Eighth Schedule to Act 58 of 1962, as inserted by section 92 of Act 74 of 2002 and amended by section 55 of Act 20 of 2006

131. (1) Paragraph 64A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Awards in terms of the Restitution of Land Rights Act [and government scrapping payments]”; and

(b) by the deletion of subparagraph (b).

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 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, section 108 of Act 7 of 2010 and section 116 of Act 24 of 2011

132. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“Subject to subparagraph (5), a person other than a headquarter company 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)), if—”

(b) by the substitution in subparagraph (2)(a) for subitem (i) of the following subitem:

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“(i) held at least 10 per cent of the equity shares and voting rights in that **[controlled]** foreign company; and”;

- (c) by the insertion in subparagraph (2)(b) of the word “or” at the end of subitem (ii);
- (d) by the substitution in subparagraph (2)(b) for the expression “; or” at the end of subitem (iii) of a full stop;
- (e) by the deletion in subparagraph (2)(b) of subitem (iv);
- (f) by the insertion after subparagraph (2) of the following subparagraph:

“(2A) Subject to subparagraph (5), a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)) if that headquarter company (whether alone or together with any other person forming part of the same group of companies as that headquarter company) immediately before that disposal held at least 10 per cent of the equity shares and voting rights in that foreign company: Provided that in determining the total equity shares in a foreign company, there must not be taken into account any share which would have constituted a hybrid equity instrument, as defined in section 8E, but for the three year period requirement contemplated in that definition.”;

- (g) 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)).”;

- (h) by the substitution for subparagraphs (3) and (4) of the following subparagraphs:

“(3) Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any equity share in any foreign company—

(a) by a person which is or was disregarded in terms of subparagraphs (2) and (5); or

(b) by a headquarter company which is or was disregarded in terms of subparagraphs (2A) and (5).

in any year of assessment, if—

[(a)](i) the foreign company prior to that disposal was a controlled foreign company in relation to that person or headquarter company or any other company in the same group of companies as that person or headquarter company;

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- [(b)](ii)** the equity share in that foreign company was disposed of to a connected person in relation to that person or headquarter company either before or after that disposal;
- [(c)](iii)** that person or headquarter company—
- [(i)](aa)** disposed of that equity share for no consideration or for consideration which does not reflect an arm's length price, other than a distribution contemplated in **[subitem (ii)]** subsubitem (bb);
- [(ii)](bb)** disposed of that equity share by means of a distribution unless the full amount of that distribution—
- [(aa)](A)** was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or
- [(bb)](B)** was included in the income of a shareholder of that foreign company or would but for the provisions of section 10(1)(k)(ii)(dd) have been so included; or
- [(iii)](cc)** disposed of any consideration received or accrued from the disposal of that equity share (or any amount received or accrued in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share forms part—
- [(aa)](A)** for no consideration or for consideration which does not reflect an arm's length price (other than a distribution contemplated in **[(bb)]** subsubitem (B));
- [(bb)](B)** by means of a distribution by a company, unless the full amount of that distribution—
- [(A)](AA)** was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or
- [(B)](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) have been so included; and
- [(d)](iv)** that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share forms part, to be a controlled

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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)).

(4) Where subparagraph (3) does not apply due to the fact that any distribution as provided for in subparagraph [(3)(c)] (3)(iii)—

- (a) would have been subject to secondary tax on companies but for section 64B(5)(f); or
- (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),

and the company to which that distribution was made, disposes of any amount of that distribution in the circumstances contemplated in subparagraph [(3)(c)(i), (ii) or (iii)] (3)(iii)(aa), (bb) or (cc), that company must be treated as having disposed of the equity share in that foreign company by means of a disposal which is or was disregarded in terms of subparagraph (2).”;

- (i) by the substitution in subparagraph (3)(iii)(bb) for subsubitem (B) of the following subsubitem:

“(B) was included in the income of a shareholder of that foreign company or would but for the provisions of section [10(1)(k)(ii)(dd)] 10B(2)(a) or (b) have been so included; or”;

- (j) by the substitution in subparagraph (3)(iii)(cc)(B) for unit (BB) of the following unit:

“(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)] 10B(2)(a) or (b) have been so included; and”;

- (k) by the substitution in subparagraph (3)(iv) for the words following subitem (bb) of the following words:

“(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)**]).”;

- (l) 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)] 10B(2)(a) or (b);”;

- (m) by the substitution in subparagraph (5) for the words preceding the proviso of the following words:

“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’ (other than a foreign

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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 shares and voting rights in that company”.

(2) Paragraphs (a), (b) (c), (d), (e), (f), (h) and (m) of subsection (1) are deemed to have come into operation on 1 January 2012 and apply in respect of disposals made on or after that date.

(3) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 January 2011.

(4) Paragraphs (i), (j), (k) and (l) of subsection (1) are deemed to have come into operation on 1 April 2012 and apply in respect of disposals made on or after that date.

Substitution of paragraph 64B of Eighth Schedule to Act 58 of 1962

133. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 64B of the following paragraph:

“Disposal of equity shares in foreign companies

64B. (1) Subject to subparagraph (5), a person other than a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)), if—

(a) that person (whether alone or together with any other person forming part of the same group of companies as that person) immediately before that disposal—

(i) held at least 10 per cent of the equity shares and voting rights in that foreign company; and

(ii) held the interest contemplated in subitem (i) for a period of at least 18 months prior to that disposal, unless—

(aa) that person is a company;

(bb) that interest was acquired by that person from any other company that forms part of the same group of companies as that person; and

(cc) that person and other company in aggregate held that interest for more than 18 months; and

(b) that interest is disposed of to any person that is not a resident (other than a controlled foreign company) for an amount that—

(i) is equal to or exceeds the market value of the interest; and

(ii) does not include an amount that does not constitute a share in any company.

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(2) Subject to subparagraph (5), a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)) if that headquarter company (whether alone or together with any other person forming part of the same group of companies as that headquarter company) immediately before that disposal held at least 10 per cent of the equity shares and voting rights in that foreign company.

(3) Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any equity share in any foreign company—

(a) by a person which is or was disregarded in terms of subparagraphs (1) and (5); or

(b) by a headquarter company which is or was disregarded in terms of subparagraphs (2) and (5),

in any year of assessment, if—

(i) the foreign company prior to that disposal was a controlled foreign company in relation to that person or headquarter company or in relation to any other company in the same group of companies as that person or headquarter company;

(ii) the equity share in that foreign company was disposed of to a connected person in relation to that person or headquarter company either before or after that disposal;

(iii) that person—

(aa) disposed of that equity share on or before 31 December 2012 for no consideration or for consideration which does not reflect an arm's length price, other than a distribution contemplated in subsubitem (bb);

(bb) disposed of that equity share by means of a distribution made on or before 31 December 2012 unless the full amount of that distribution—

(A) was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or

(B) was included in the income of a shareholder of that foreign company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; or

(cc) disposed of any consideration on or before 31 December 2012 where that consideration was received or accrued from the disposal of that equity share (or any amount received in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share forms part—

(A) for no consideration or for consideration which does not reflect an arm's length price (other than a distribution contemplated in unit (B));

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(B) by means of a distribution by a company, unless the full amount of that distribution—

(AA) was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or

(BB) was included in the income of a shareholder of that company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; and

(iv) that foreign company ceased, in terms of any transaction, operation or scheme of which the disposal of the equity share 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).

(4) Where subparagraph (3) does not apply due to the fact that any distribution as provided for in subparagraph (3)(iii)—

(a) would have been subject to secondary tax on companies but for section 64B(5)(f); or

(b) would have been included in the income of the company to which that distribution was made but for section 10B(2)(a) or (b),

and the company to which that distribution was made disposes of any amount of that distribution in the circumstances contemplated in subparagraph (3)(iii)(aa), (bb) or (cc), that company must be treated as having disposed of the equity share in that foreign company by means of a disposal which is or was disregarded in terms of subparagraph (1).

(5) A person must disregard any capital gain determined in respect of any foreign return of capital received by or accrued to that person from a ‘foreign company’ as defined in section 9D (other than 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 10 per cent of the total equity shares and voting rights in that company: Provided that this subparagraph does not apply in respect of any distribution which forms part of any transaction, operation or scheme in terms of which any capital gain is disregarded while any corresponding expenditure is taken into account by that person or any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act.

(6) The provisions of this paragraph do not apply in respect of any capital gain or capital loss determined in respect of—

(a) the disposal of any equity share in any portfolio contemplated in paragraph (e) of the definition of ‘company’ in section 1; and

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(b) any distribution contemplated in subparagraph (5) by any portfolio contemplated in item (a).”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

Amendment of paragraph 65 of Eighth Schedule to Act 58 of 1962, as amended by section 103 of Act 60 of 2001, section 106 of Act 45 of 2003, section 27 of Act 16 of 2004 and section 78 of Act 35 of 2007

134. (1) Paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(d) for subitem (ii) of the following subitem:

“(ii) all the replacement assets constitute assets contemplated in section 9(2)(b);” and

(b) by the substitution in subparagraph (1)(d) for subitem (ii) of the following subitem:

“(ii) all the replacement assets constitute assets contemplated in section 9(2)(b)(k);”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 22 December 2003 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come 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 66 of Eighth Schedule to Act 58 of 1962, as amended by section 33 of Act 9 of 2001, section 107 of Act 45 of 2003, section 67 of Act 8 of 2007 and section 79 of Act 35 of 2007

135. (1) Paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (d) of the following item:

“(d) all the replacement assets constitute assets contemplated in section 9(2)(b)(k);”

(2) Subsection (1) is deemed to have come 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 67A of Eighth Schedule to Act 58 of 1962, as substituted by section 93 of Act 74 of 2002 and amended by section 109 of Act 45 of 2003, section 81 of Act 35 of 2007, section 82 of Act 60 of 2008 and section 109 of Act 7 of 2010

136. (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

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“(1) A holder of a [**participatory interest**] share in a [**portfolio of a collective investment scheme in property**] REIT that is a resident must determine a capital gain or capital loss in respect of any [**participatory interest**] share in that [**portfolio**] REIT only upon the disposal of that [**interest**] share.

(2) The capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that [**participatory interest**] share and its base cost.”; and

(b) by the deletion of subparagraphs (3), (3A) and (4).

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of years of assessment commencing on or after that date.

Repeal of paragraph 67AB of Eighth Schedule to Act 58 of 1962

137. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 67AB.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 67B of Eighth Schedule to Act 58 of 1962, as inserted by section 110 of Act 45 of 2003

138. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 67B of the following paragraph:

“**[Transfer of a unit] Disposal of immovable property by a share block company to its member**

67B. (1) For the purposes of this paragraph—

‘share’ means a share as defined in section 1 of the Share Blocks Control Act;

‘share block company’ means a share block company as defined in section 1 of the Share Blocks Control Act;

‘Share Blocks Control Act’ means the Share Blocks Control Act, 1980 (Act No. 59 of 1980).

(2) This paragraph applies where a person who holds a right of exclusive use of a specified part of the immovable property of a share block company, which right is conferred by reason of the ownership of a share by that person in that share block company, acquires ownership of that

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specified part of immovable property from that share block company as a result of a disposal made by the share block company.

(3) Where a person who owns a share in a share block company acquires ownership of immovable property as a result of a disposal contemplated in subparagraph (2)—

(a) the share block company must disregard any capital gain or capital loss determined in respect of that disposal; and

(b) that person must—

(i) disregard any capital gain or capital loss determined in respect of any disposal of that share as a result of that disposal;

(ii) be treated as having—

(aa) acquired that immovable property for an amount equal to the expenditure contemplated in paragraph 20 incurred by the person in acquiring that share;

(bb) incurred the expenditure contemplated in subsubitem (aa) on the same date that the expenditure was incurred by the person in acquiring that share;

(cc) effected improvements to that immovable property for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the specified part of the immovable property of the share block company in respect of which the person had a right of exclusive use as a result of the ownership of that share;

(dd) incurred the expenditure contemplated in subsubitem (cc) on the same date that the expenditure was incurred by the person in effecting the improvements to the specified part of the immovable property of the share block company in respect of which the person had a right of exclusive use as a result of the ownership of that share;

(ee) acquired that immovable property on the date that the share was acquired by the person; and

(ff) used that immovable property in the same manner as the person used the immovable property in respect of which the person had a right of use as a result of the ownership of that share; and

(c) any valuation of that share which was done by that person within the period prescribed by paragraph 29(4) must be deemed to have been done by that person in respect of that immovable property.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

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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, section 110 of Act 7 of 2010 and section 117 of Act 24 of 2011

139. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “date of distribution” of the following definition:

“ ‘date of distribution’, in relation to any distribution, means—

(a) where the company that makes the distribution is a listed company, on the date on which the dividend is paid; or

(b) where the company that makes the distribution is not a listed company, on the earlier of the date on which the distribution is paid or becomes payable.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of distributions made on or after that date.

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, section 79 of Act 17 of 2009 and section 118 of Act 24 of 2011

140. (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where a company makes a distribution of an asset *in specie* to a person holding a share in that company[,]=

(a) 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; and

(b) that person must be treated as having acquired that asset 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 for the purposes of paragraph 20(1)(a).”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of distributions made on or after that date.

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 16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007, section 60 of Act 3 of 2008, section 84 of Act 60 of 2008 and section 119 of Act 24 of 2011

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141. (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:

“**Returns of capital and foreign returns of capital by way of distributions of cash or assets *in specie***”;

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

“Subject to subparagraph (2), where a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share 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 cash or asset occurs—”;

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

“(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]** 31 March 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is disposed of;”;

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

“(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 return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share 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 from the base cost of those shares held when that return of capital or foreign return of capital was received or accrued; and

(b) dividing the result by the number of those shares held when that return of capital or foreign return of capital was received or accrued.”;

(e) by the deletion of subparagraph (3); and

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

“(4) Every—

(a) company that makes a distribution to any other person; and

(b) **[every]** person that pays a distribution to any other person on behalf of a company,

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on or after 1 April 2012 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 return of capital.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

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 and section 120 of Act 24 of 2011

142. (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) Where—

(a) a return of capital or foreign 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 46(1)) is received by or accrues to a shareholder in respect of a share; and

(b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after 1 October 2007 and before 1 April 2012,

that shareholder must be deemed to have disposed of part of that share on the date that the return of capital or foreign return of capital is received by or accrues to the shareholder.”;

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

“(1A) Subject to paragraph 76(2), where—

(a) a return of capital or foreign 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 46(1)) is received by or accrues to a shareholder in respect of a share;

(b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after valuation date but before 1 October 2007; and

(c) that share is not disposed of before 1 April 2012,

that return of capital or foreign return of capital must be treated as having been distributed on 1 April 2012.”; and

(c) 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 received or accrued by way of a return of capital or foreign return of capital.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

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Amendment of paragraph 76B of Eighth Schedule to Act 58 of 1962, as inserted by section 121 of Act 24 of 2011

143. (1) Paragraph 76B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the words preceding subitem (i) of the following words:

“Where—

- (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a **[shareholder]** holder of a share in respect of **[a]** that share;
- (b) that return of capital or foreign return of capital is received by or accrues to **[that shareholder]** the holder of that share on or after 1 April 2012 and prior to the disposal of that share; and
- (c) that share constitutes a pre-valuation date asset in relation to **[that shareholder]** the holder of that share,

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]** the holder of that share must be treated as—”; and

(b) by the substitution for subparagraphs (2) and (3) of the following subparagraphs:

“(2) Where—

- (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a **[shareholder]** holder of a share in respect of **[a]** that share; and
- (b) that return of capital or foreign return of capital is received by or accrues to **[that shareholder]** the holder of that share on or after 1 April 2012 and prior to the disposal of that share,

the **[shareholder]** holder of that share 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]** the holder of that share.

(3) Where the amount of a return of capital or foreign return of capital contemplated in subparagraph (2) exceeds the expenditure in respect of the share in respect of which that return of capital or foreign return of capital is received or accrues, the amount of the excess must be treated as a capital gain in determining **[that shareholder’s]** the aggregate capital gain or aggregate capital loss of the holder of that share for the year of assessment in which

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that return of capital or foreign return of capital is received by or accrues to the [shareholder] holder.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of years of assessment commencing on or after that date.

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, section 111 of Act 7 of 2010 and section 123 of Act 24 of 2011

144. (1) Paragraph 78 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 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 or foreign 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 or foreign dividend.”;

(b) by the insertion of the following subparagraph:

“(2) Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision or consolidation or a conversion or incorporation contemplated in section 40A or 40B—

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and

(b) those newly issued shares must be treated as—

(i) having been acquired for an amount of expenditure equal to the aggregate expenditure allowable in terms of paragraph 20 incurred in respect of those previously held shares which expenditure must be treated as having been incurred on the same date as the expenditure incurred in respect of those previously held shares;

(ii) having been acquired on the same date as those previously held shares; and

(iii) having a market value equal to any market value adopted or determined in respect of those previously held shares in terms of paragraph 29(4).

with the aggregate expenditure or market value as the case may be allocated among all those newly issued shares in proportion to their relative market values.”; and

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

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“(3) Where a company issues shares in substitution of previously held shares as contemplated in subparagraph (2) and also effects a return of capital or foreign return of 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 return of capital or foreign return of capital; and
- (b) both the substitution and that return of capital or foreign 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 return of capital or foreign return of capital received in exchange therefor.”.

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 April 2012.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2011.

Repeal of paragraph 78 of Eighth Schedule to Act 58 of 1962

145. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 78.

(2) Subsection (1) comes into operation on 1 January 2013.

Substitution of paragraph 2 of Tenth Schedule to Act 58 of 1962

146. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2 of the following paragraph:

“RATE

2. The rate of tax on taxable income attributable to oil and gas income of any oil and gas company will not exceed 28 cents on each rand of taxable income.”.

(2) Subsection (1) comes into operation on 31 March 2013 and applies in respect of—

- (a) years of assessment ending during the period of 12 months ending on that date; and
- (b) all years of assessment subsequent to any year of assessment contemplated in paragraph (a).

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Amendment of paragraph 3 of Tenth Schedule to Act 58 of 1962, as amended by section 72 of Act 8 of 2007 and section 85 of Act 17 of 2009

147. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 3 of the following paragraph:

“[SECONDARY TAX ON COMPANIES] DIVIDENDS TAX”

3. (1) The rate of dividends tax will not exceed 5 per cent **[on]** of the [net] amount of any dividend [declared as determined in terms of section 64B(3)], as defined in section 64D, that is paid as contemplated in section 64E(2) by an oil and gas company out of [the profits of] amounts attributable to its oil and gas income.

(2) Notwithstanding subparagraph (1), the rate of dividends tax may not exceed 0 per cent **[on]** of the [net] amount of any dividend [declared], as defined in section 64D, that is paid by any oil and gas company [derived from the profits of] out of amounts attributable to its oil and gas income if all of its oil and gas rights are solely derived (directly or indirectly) by virtue of an OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), previously held by that company.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Substitution of paragraph 6 of Tenth Schedule to Act 58 of 1962

148. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 6 of the following paragraph:

“THIN CAPITALISATION

6. (1) Subject to subparagraph (2), where any financial assistance as defined in section 31(1) that is provided to an oil and gas company—

(a) constitutes an affected transaction as defined in that section; or

(b) forms part of a transaction, operation, scheme, agreement or understanding that constitutes an affected transaction as defined in that section,

the Commissioner may, for the purposes of section 31(2) and on application by that oil and gas company, issue a directive that deems any transaction, operation, scheme, agreement or understanding associated with the provision of that financial assistance to have been entered into on the terms and conditions that would have existed had the parties to that transaction,

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

(2) Any directive issued by the Commissioner in terms of subsection (1) may be made subject to such conditions and limitations as may be determined by the Commissioner.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of years of assessment commencing on or after that date.

Insertion of Eleventh Schedule in Act 58 of 1962

149. The Income Tax Act, 1962, is hereby amended by the addition after the Tenth Schedule of the following Schedule:

“ELEVENTH SCHEDULE

GOVERNMENT GRANTS EXEMPT FROM NORMAL TAX

(Section 12P)

Automotive Production and Development Programme paid by the Department of Trade and Industry;

Automotive Incentive Scheme paid by the Department of Trade and Industry;

Black Business Supplier Development Programme paid by the Department of Trade and Industry;

Business Process Services paid by the Department of Trade and Industry;

Capital Projects Feasibility Programme paid by the Department of Trade and Industry;

Capital Restructuring Grant paid by the Department of Housing;

Clothing and Textiles Competitiveness Programme paid by the Department of Trade and Industry;

Co-operative Incentive Scheme paid by the Department of Trade and Industry;

Critical Infrastructure Programme paid by the Department of Trade and Industry;

Eastern Cape Jobs Stimulus Fund paid by the Department of Economic Development, Environmental Affairs and Tourism of the Eastern Cape;

Enterprise Investment Programme paid by the Department of Trade and Industry;

Equity Fund paid by the Department of Science and Technology;

Export Marketing and Investment Assistance paid by the Department of Trade and Industry;

Film Production Incentive paid by the Department of Trade and Industry;

Food Fortification Grant paid by the Department of Health;

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Idea Development Fund paid by the Department of Science and Technology;

Industrial Development Zone Programme paid by the Department of Trade and Industry;

Industry Matching Fund paid by the Department of Science and Technology;

Integrated National Electrification Programme: Off- Grid paid by the Department of Energy;

Jobs Fund paid by the National Treasury;

Manufacturing Competitiveness Enhancement Programme paid by the Department of Trade and Industry;

Sector Specific Assistance Scheme paid by the Department of Trade and Industry;

Small, Medium Enterprise Development Programme paid by the Department of Trade and Industry;

Small/Medium Manufacturing Development Programme paid by the Department of Trade and Industry;

South African Research Chairs Initiative paid by the Department of Science and Technology;

Support Programme for Industrial Innovation paid by the Department of Trade and Industry;

Taxi Recapitalisation Programme paid by the Department of Transport;

Technology Development Fund paid by the Department of Science and Technology;

Technology and Human Resources for Industry Programme paid by the Department of Trade and Industry;

Transfers to the South African National Taxi Council paid by the Department of Transport;

Transfers to the University of Pretoria, University of KwaZulu-Natal and University of Stellenbosch paid by the Department of Transport;

Youth Technology Innovation Fund paid by the Department of Science and Technology.”.

Amendment of section 47B of Act 91 of 1964, as inserted by section 59 of Act 30 of 2000 and amended by section 40 of Act 12 of 2003, section 13 of Act 9 of 2005, section 92 of Act 35 of 2007, section 87 of Act 17 of 2009 and section 126 of Act 24 of 2011

150. Section 47B of the Customs and Excise Act, 1964 (Act. 91 of 1964), is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) (i) (aa) The tax shall be charged [**at the rate of R190**] on the carriage of each chargeable passenger departing on a flight[: **Provided that the Minister may by notice in the *Gazette* lower the rate, and by like notice amend any rate so lowered, in respect of any flight of which the final destination is any country in Africa**].

(bb) A lower rate of tax may be levied in respect of any flight of which the final destination is any country in Africa.

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(cc) The rates of tax shall be the rates in force when this section comes into operation until amended as contemplated in subparagraph (ii).

(ii) The Minister may by notice in the *Gazette* amend the rates of tax from a date specified in that notice.

[(ii)](iii) In considering [the lowering or amendment of the rate,] the imposition of a lower rate as contemplated in subparagraph (i)(bb) the Minister shall take into account—

(aa) the distance between an airport in a country concerned and an airport in the Republic;

(bb) any agreement existing between the Republic and any of the countries concerned;

(cc) the price of the flight ticket; and

(dd) any other ground which may be regarded as reasonable in the circumstances.

[(iii)](iv) The provisions of section 48(6) shall apply [*mutatis mutandis*] with the necessary changes to any notice referred to in [the proviso to subparagraph (i)] subparagraph (ii).”.

Amendment of section 116 of Act 91 of 1964, as substituted by section 18 of Act No. 95 of 1965 and amended by section 72(b) of Act No. 45 of 1995 and section 27 of Act No. 32 of 2005

151. Section 116 of the Customs and Excise Act, 1964 is hereby amended—

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

“Notwithstanding anything to the contrary contained in this Act [**contained**], the Commissioner, may in respect of any excisable goods manufactured by natural persons or institutions for their own use and not for sale or disposal in any manner—”;

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

“(5) The Commissioner may make rules—

(a) specifying any requirement to qualify for any exemption contemplated in subsection (1);

(b) regarding any matter which is required or permitted in terms of this section to be prescribed by rules;

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

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Continuation of certain amendments of Schedules to Act 91 of 1964

152. 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 2011 up to and including 31 July 2012, shall not lapse by virtue of section 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

Amendment of section 10 of Act 101 of 1990

153. (1) Section 10 of the Income Tax Act, 1990 (Act No. 101 of 1990), is hereby amended—

(a) by the repeal in subsection (1) of paragraph (b); and

(b) by the repeal in subsection (2) of paragraph (b).

(2) Subsection (1) is deemed to have come into operation on 11 July 1990.

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, section 119 of Act 7 of 2010 and section 129 of Act 24 of 2011

154. (1) Section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), is hereby amended—

(a) by the substitution in paragraph (b) of the definition of “instalment credit agreement” for subparagraph (ii) of the following subparagraph:

“(ii) such sum of money includes finance charges, including any amount determined with reference to the time value of money, stipulated in the lease; and”;

(b) by the substitution in paragraph (b) of the definition of “instalment credit agreement” for subparagraph (v) of the following subparagraph:

“(v) (aa) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, those goods and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of those goods while the agreement remains in force; or

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- (bb) (A) the lessor accepts the full risk of destruction or loss of, or other disadvantage to those goods and assumes all obligations of whatever nature arising in connection with the insurance of those goods; and
- (B) the lessee accepts the full risk of maintenance and repair of those goods and reimburses the lessor for the insurance of those goods,
- while the agreement remains in force;”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of goods supplied 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, section 120 of Act 7 of 2010 and section 131 of Act 24 of 2011

155. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsection (19) of the following subsection:

“(19) For the purposes of this Act, where any supply of—

- (a) goods consisting of **[a unit] immovable property** is made by a share block company—
- (i) in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act; or
- (ii) as a result of a sale by that share block company of that immovable property to a person who held a right of exclusive use of that immovable property, which right was conferred by reason of the ownership of a share by that person in that share block company; or
- (b) services comprising the waiving of rights against a share block company is made to that share block company[,]—
- (i) in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act; or
- (ii) by a person as part of a sale contemplated in paragraph (a)(ii),

such supply shall be deemed to have been made otherwise than in the course or furtherance of an enterprise.”; and

(b) by the addition to subsection (24) of the following further proviso:

“: Provided further that this subsection shall not apply to—

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(a) goods that are deemed to have been imported under paragraph (i) of the proviso to section 13(1);

(b) goods to which section 18(10) previously applied.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013 and applies in respect of goods or service supplied on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of goods supplied on or after that date.

Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006 and section 109 of Act 60 of 2008

156. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(k) the supply of goods by any person that is not a resident of the Republic and not a vendor, other than the supply of goods by an inbound duty and tax free shop, which have [**been imported and entered for storage in a licensed Customs and Excise storage warehouse but have**] not been entered for home consumption: Provided that this paragraph shall not apply where such person applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs that the provisions of this paragraph shall not apply to such person[.]; ”;

(b) by the addition after paragraph (k) of the following paragraphs:

“(l) the supply of any goods or services by a bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), to any of its members to the extent that the consideration for such supply consists of membership contributions;

(m) the supply of any goods or services by a political party registered in terms of section 15 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), to any of its members to the extent that the consideration for such supply consists of membership contributions.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of goods supplied on or after that date.

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,

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section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010 and section 137 of Act 24 of 2011

157. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the deletion in subsection (3)(b) of the proviso to subparagraph (i);
- (b) by the substitution in subsection (3)(h) for paragraph (i) of the proviso of the following paragraph:

“(i) where such goods consist of second-hand goods contemplated in **[the proviso to]** paragraph (b) of the definition of ‘input tax’ in section 1, the amount determined in terms of this subsection shall **[not exceed the amount of transfer duty or stamp duty, as the case may be, which was or would have been payable, less]** be reduced by any amount which has previously been deducted in terms of the provisions of subsection (3)(a)(ii) or (b)(i) of this section or section 18(4) or (5), in respect of such acquisition, original issue or registration of transfer, as the case may be;”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012 and applies in respect of supplies made on or after that date.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006, section 112 of Act 60 of 2008, section 123 of Act 7 of 2010 and section 138 of Act 24 of 2011

158. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the deletion in subsection (4) of paragraph (iii) of the proviso;
- (b) by the substitution in subsection (5) for paragraph (ii) of the proviso of the following paragraph:

“(ii) where the capital goods or services consist of second-hand goods contemplated in **[the proviso to]** paragraph (b) of the definition of ‘input tax’ in section 1, the amount determined in terms of this subsection shall **[not exceed the amount of transfer duty or stamp duty, as the case may be, which is or would have been payable, less]** be reduced by any amount which has previously been deducted in terms of the provisions of section 16(3)(a)(ii) or (b)(i), or subsection (4) of this section, in respect of that acquisition, original issue or registration of transfer, as the case may be.”; and

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

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“and where a deduction of input tax would have been denied in terms of section 17(2), [and] or to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is a customs controlled area enterprise or an IDZ operator, those goods or services shall be deemed to be supplied by the vendor concerned in the same tax period in which they were so acquired, in accordance with the formula:”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012 and applies in respect of supplies made on or after that date.

Amendment of section 21 of Act 89 of 1991, as amended by section 26 of Act 136 of 1992, section 34 of Act 97 of 1993, section 176 of Act 45 of 2003, section 48 of Act 16 of 2004 and section 36 of Act No. 18 of 2009

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

- (a) by the substitution in subsection (1) for the comma following paragraph (d) of a semicolon; and
- (b) by the addition to subsection (1) after paragraph (d) of the following paragraphs:

“(e) an error has occurred in stipulating the amount of consideration agreed upon for that supply; or

(f) an error or omission has occurred in respect of the particulars required under section 20(4) or (5) to be contained in a tax invoice.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of supplied made on or after that date.

Amendment of section 4 of Act 4 of 2002

160. (1) Section 4 of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (c);
- (b) by the deletion in subsection (1) of the full stop at the end of paragraph (d) and the insertion of a semi-colon at the end of that paragraph; and
- (c) by the addition to subsection (1) after paragraph (d) 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; and

(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.”.

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(2) Subsection (1) is deemed to have come into operation on 1 April 2002.

Amendment of section 1 of Act 25 of 2007, as amended by section 145 of Act 24 of 2011

161. (1) Section 1 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), is hereby amended—

(a) by the insertion before the definition of “close corporation” of the following definition:

“**‘bank restricted stock account’** means a bank restricted stock account as defined in the exchange rules;”;

(b) by the insertion after the definition of “exchange” of the following definition:

“**‘exchange rules’** means the exchange rules as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004) or a directive issued in accordance with section 11(1)(c) of that Act;”;

(c) by the insertion after the definition of security of the following definitions:

“**‘security restricted cash loan stock account’** means a security restricted cash loan stock account as defined in the exchange rules;

‘security restricted share loan stock account’ means a security restricted share loan stock account as defined in the exchange rules;”;

(d) by the insertion after the definition of “unlisted security” of the following definition:

“**‘unrestricted stock account’** means an unrestricted stock account as defined in the exchange rules;”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Amendment of section 2 of Act 25 of 2007, as amended by section 60 of Act 18 of 2009

162. (1) Section 2 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsection (1) of the following subsection—

“(1) There must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the securities transfer tax, in respect of—

(a) every transfer of any security issued by—

(i) a close corporation or company incorporated, established or formed inside the Republic; or

(ii) a company incorporated, established or formed outside the Republic and listed on an exchange; and

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(b) any reallocation of securities from that member's unrestricted stock account, bank restricted stock account, security restricted cash loan stock account or security restricted share loan stock account to a stock account of that member other than an unrestricted stock account, a bank restricted stock account, security restricted cash loan stock account or security restricted share loan stock account,

at the rate of 0,25 per cent of the taxable amount of that security determined in terms of this Act.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

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, section 127 of Act 7 of 2010 and section 148 of Act 24 of 2011

163. (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended—

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

“(q) if—

(i) the person to whom that security is transferred is a member who has purchased the security in that member's capacity as principal; or

(ii) the transaction is one in which the person to whom that security is transferred is a member who has purchased the security to provide an equity hedging facility to a third party, or where such member makes the security available for reward to a non-member, by means of a derivative instrument, to enable that non-member to provide an equity hedging facility to a third party;”;

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

“(i) the person to whom that security is transferred is a member who has **[purchased the]** acquired and holds that security in **[that member's capacity as principal]** the unrestricted stock account, bank restricted stock account, security restricted cash loan stock account or security restricted share loan stock account of that member; or”;

(c) by the substitution in subsection (1) for the full-stop at the end of paragraph (r) of the expression “; or”; and

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

“(s) if that security constitutes a share in a headquarter company as defined in section 1 of the Income Tax Act.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of transactions entered into—

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(a) on or after that date; and

(b) on or before 31 December 2012,

in respect of which no securities transfer tax has been paid.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

(4) Paragraphs (c) and (d) are deemed to have come into operation on 1 January 2011.

Amendment of section 13 of Act 60 of 2008

164. (1) Section 13 of the Revenue Laws Amendment Act, 2008, is hereby amended—

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

(b) by the deletion of subsection (2).

(2) Subsection (1) is deemed to have come into operation on 8 January 2009.

Amendment of section 13 of Act 17 of 2009

165. (1) Section 13 of the Taxation Laws Amendment Act, 2009, is hereby amended—

(a) by the deletion in subsection (1) of paragraphs (h) and (i); and

(b) by the deletion of subsection (6).

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Amendment of section 2 of Act 7 of 2010

166. Section 2 of the Taxation Laws Amendment Act, 2010 (Act No. 7 of 2010), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Amendment of section 48 of Act 7 of 2010

167. Section 48 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

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Repeal of section 111 of Act 7 of 2010

- 168.** (1) Section 111 of the Taxation Laws Amendment Act, 2010, is hereby repealed.
(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

Amendment of section 121 of Act 7 of 2010

169. Section 121 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Amendment of section 128 of Act 7 of 2010

170. Section 128 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Amendment of section 3 of Act 24 of 2011

171. Section 3 of the Taxation Laws Amendment Act, 2011 (Act No. 24 of 2011), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Amendment of section 7 of Act 24 of 2011

172. (1) Section 7 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsections (3) and (4) of the following subsections—

“(3) Paragraphs (b), (d), (e), (f), (h), (k), (m), (u) and (zJ) of subsection (1) are deemed to have come into operation on 1 January 2011.

(4) Paragraphs (c), (g), (i), [(u),] (w), (zL), (zN) and (zO) of subsection (1) come into operation on 1 April 2012.”.

- (2) Subsection (1) is deemed to have come into operation on 28 December 2011.

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Repeal of section 21 of Act 24 of 2011

- 173.** (1) Section 21 of the Taxation Laws Amendment Act, 2011, is hereby repealed.
(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 28 of Act 24 of 2011

- 174.** (1) Section 28 of the Taxation Laws Amendment Act, 2011, is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection—
- “(3) Paragraphs (b), (c), (f) and (j) of subsection (1) are deemed to have come into operation on 1 March 2011 and apply in respect of amounts received or accrued during years of assessment commencing on or after that date.”; and
- (a) by the substitution for subsection (8) of the following subsection—
- “(8) Paragraph (p) of subsection (1) comes into operation on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 29 of Act 24 of 2011

- 175.** (1) Section 29 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection—
- “(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 and foreign 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 of dividends and foreign dividends received or accrued on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 32 of Act 24 of 2011

- 176.** (1) Section 32 of the Taxation Laws Amendment Bill, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) Subsection (1) comes into operation on 1 [April] October 2012 [unless a later date is determined by the Minister by notice in the *Gazette*] and applies in respect of expenditure incurred in respect of research and development on or after 1 [April] October 2012 [or such later date determined by the Minister by notice in the *Gazette*] but before 1 [April] October 2022.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 43 of Act 24 of 2011

177. (1) Section 43 of the Taxation Laws Amendment Bill, 2011, is hereby amended by the substitution for subsection (3) of the following subsections:

“(3) [Paragraphs] Paragraph (c) [and (f)] of subsection (1) [are] is deemed to have come into operation on 1 March 2011 and [apply] applies in respect of the year of assessment commencing on or after that date.

(4) Paragraph (f) 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.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011.

Amendment of section 49 of Act 24 of 2011

178. (1) Section 49 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into—

(a) on or after that date; and

(b) on or before 31 December 2012.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 50 of Act 24 of 2011

179. (1) Section 50 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) Subsection (1) is deemed to have come into operation on 3 August 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into—

(a) on or after that date; and

(b) on or before 31 December 2012.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 54 of Act 24 of 2011

180. Section 54 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Amendment of section 70 of Act 24 of 2011

181. (1) Section 70 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 30 August 2011 and apply in respect of debt instruments and shares issued on or after that date.

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

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 72 of Act 24 of 2011

182. (1) Section 72 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) by the substitution in subsection (1)(a) for [paragraph (a)] the words preceding subparagraph (i) of the following [paragraph] words:

‘[(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

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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—’;”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 116 of Act 24 of 2011

183. (1) Section 116 of the Taxation Laws Amendment Act, 2011, is hereby amended:

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

“(d) by the substitution in subparagraph (2)(b) for the full stop at the end of subitem [(ii)] (iii) of the expression ‘; or’;”;

(b) by the deletion in subsection (1) of paragraphs (f), (g), (h), (i) and (j); and

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

“(3) [Paragraphs] Paragraph (b) [, (f), (g), (h), (i) and (j)] of subsection (1) [come] comes into operation on 1 April 2012 and [apply] applies in respect of disposals made on or after that date.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 119 of Act 24 of 2011

184. (1) Section 119 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) [comes] is deemed to have come into operation on [1 April 2012] 1 January 2011.”

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

Amendment of section 121 of Act 24 of 2011

185. (1) Section 121 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of returns of capital and foreign returns of capital received or accrued on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

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Amendment of section 129 of Act 24 of 2011

186. Section 129 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Paragraph (a) of subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Amendment of section 132 of Act 24 of 2011

187. Section 132 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Repeal of section 145 of Act 24 of 2011

188. (1) The Taxation Laws Amendment Act, 2011, is hereby amended by the repeal of section 145.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

Amendment of section 149 of Act 24 of 2011

189. Section 149 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”.

Short title and commencement

190. (1) This Act is called the Taxation Laws Amendment Act, 2012.

(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 assessment in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2013.